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TO ESTABLISH CERTAIN PUBLIC BUILDINGS POLICIES FOR THE FEDERAL GOVERNMENT

(98-48)

HEARINGS

BEFORE THE

SUBCOMMITTEE ON
PUBLIC BUILDINGS AND GROUNDS

OF THE

COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION
HOUSE OF REPRESENTATIVES

NINETY-EIGHTH CONGRESS

FIRST SESSION

JULY 28; OCTOBER 27; NOVEMBER 1 AND 3, 1983

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98TH CONGRESS
1ST SESSION

H. R. 630

To establish public buildings policies for the Federal Government, to establish the Public Buildings Service in the General Services Administration, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 6, 1983

Mr. LEVITAS introduced the following bill; which was referred to the Committee on Public Works and Transportation

---

A BILL

To establish public buildings policies for the Federal Government, to establish the Public Buildings Service in the General Services Administration, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Public Buildings Act Amendments of 1983".

SEC. 2. (a) Section 3 of the Public Buildings Act of 1959 (40 U.S.C. 602) is amended by striking out "The" and inserting in lieu thereof "Subject to the provisions of this Act (including annual authorization required by section 11(b) of this Act), the".

(b) Subsection (a) of section 4 of the Public Buildings Act of 1959 (40 U.S.C. 603(a)) is amended by striking out "The" and inserting in lieu thereof "Subject to annual authorization required by section 11(b) of this Act, the" and by adding at the end thereof the following new sentence: "Subject to annual authorization required by section 11(b) of this Act, the Administrator is authorized to carry out preliminary engineering and design for the alteration of a public building, whether or not such alteration has been authorized under this Act.".

(c) Subsection (b) of section 4 of the Public Buildings Act of 1959 (40 U.S.C. 603(b)) is amended by striking out "$500,000" and inserting in lieu thereof "$1,000,000 (adjusted in accordance with section 21 of this Act)", by inserting "(1)" after "(b)", and by adding at the end thereof the following new paragraph:

"(2) Notwithstanding any other provision of this Act, no public building shall be acquired by the Administrator by exchange if the current independently appraised total value of either the property to be acquired or exchanged exceeds $1,000,000 (adjusted in accordance with section 21 of this Act) and such exchange has not been approved by resolutions adopted by the Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation of the House of Representatives.".

(d) Section 5(a) of the Public Buildings Act of 1959 (40 U.S.C. 604(a)) is amended by striking out "The Administrator is authorized" and inserting in lieu thereof "Subject to annual authorization required by section 11(b) of this Act, the Administrator is authorized (1)" and by striking out "authorized to be constructed or altered under this Act.", and inserting in lieu thereof the following: "under this Act, and (2) to acquire, by purchase, options to buy any land which the Administrator determines may be necessary to carry out this Act, whether or not the construction or alteration of the public building has been authorized under this Act. After acquisition of any land, interest in land, or an option to buy land under this subsection, subject to annual authorization required by section 11(b) of this Act, the Administrator is authorized to carry out preliminary engineering and design for a project on such land, whether or not such project has been authorized under this Act.".

(e) Section 6 of the Public Buildings Act of 1959 (40 U.S.C. 605) is amended in subsection (a) by striking out "Whenever" and inserting in lieu thereof "Subject to annual authorization required by section 11(b) of this Act, whenever" and in subsection (b) by inserting after "another" the following: "subject to annual authorization required by section 11(b) of this Act".

SEC. 3. (a)(1) Section 7(a) of the Public Buildings Act of 1959 (40 U.S.C. 606(a)) is amended by striking out "$500,000" each place it appears and inserting in lieu thereof "$1,000,000 (adjusted in accordance with section 21 of this Act)" and by inserting after the second sentence the following new sentence: "No appropriation shall be made to lease space in any building if the average annual rent to be paid for that space, when added to the average annual rent paid for all other space in that building leased by the United States, results in an average annual rental rate of more than $1,000,000 (adjusted in accordance with section 21 of this Act) unless such lease has been approved by resolutions adopted by the Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation of the House of Representatives.".

(2) Such section is further amended in paragraph (1) by striking out "brief description" and inserting in lieu thereof the "detailed description" and by striking out paragraph (5) and inserting in lieu thereof the following new paragraph:

"(5) a statement by the Administrator of the economic and other justifications for not acquiring and utilizing space in buildings of historic, architectural, or cultural significance under section 102(a)(1) of the Public Buildings Cooperative Use Act of 1976; and".

(b) Subsection (b) of section 7 of the Public Buildings Act of 1959 (40 U.S.C. 606(b)) is amended by inserting "(1)" after "(b)" and by adding at the end thereof the following new paragraph:

"(2) Notwithstanding any other provision of this Act, the amount of space to be provided by any construction project approved under this section shall not be reduced by more than 10 per centum of the amount of space so approved if the proposed reduction has not been approved by resolutions adopted by the Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation of the House of Representatives.".

(c) Section 7 of the Public Buildings Act of 1959 (40 U.S.C. 606) is further amended by adding at the end thereof the following new subsections:

"(e) Whenever the Administrator determines that the best interest of the United States will be served, the Administrator is authorized to issue obligations for purchase by the Secretary of the Treasury, to the extent authorized in annual appropriation Acts, in amounts necessary to finance the acquisition or construction of any public building. The obligations issued shall be upon such terms and conditions as may be prescribed by the Secretary of the Treasury, taking into account that repayments shall not begin until the building is ready for occupancy and shall not extend beyond the useful life of the building but in no case for more than thirty years from the date of the initial repayment. Such obligations shall bear interest at a rate determined by the Secretary taking into consideration the average market yield on outstanding marketable obligations of the United States of comparable maturity. No funds for public building acquisition or construction authorized by this section may be appropriated if such construction or acquisition has not been approved by resolutions adopted by the Committees on Environment and Public Works of the Senate and Public Works and Transportation of the House of Representatives.

"(f) Whenever the cost of a proposed alteration (other than an alteration to which subsection (a) of this section applies) to a building, or part thereof, which is under lease by the United States for use for a public purpose would, when added to the cost of all other alterations made to such building or part thereof during the term of the lease (including extensions, amendments, or supplements) which have been paid for by the United States, exceed $500,000 (adjusted in accordance with section 21 of this Act), the Administrator shall make a report of such proposed alteration to the Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation of the House of Representatives. Such alteration shall not be made if either such committee disapproves the alteration during the thirty-day period beginning on the date on which such report has been submitted to both such committees.

"(g) Notwithstanding any other provision of this Act, the Administrator may not lease any space to accommodate—

"(1) major computer operations;

"(2) secure or sensitive activities related to the national defense or security, except in any case in which it would be inappropriate to locate such activities in a public building or other facility identified with the United States Government;

"(3) offices which would require major alterations in the structure or mechanical system of the building to be leased; or

"(4) a permanent courtroom, judicial chamber, or administrative office for any United States court;

except that the Administrator may lease such space if the Administrator first determines, for reasons set forth in writing, that leasing such space is necessary to meet requirements which cannot be met in public buildings and submits such reasons to the Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation of the House of Representatives.

"(h)(1) The Administrator shall publicly solicit competitive offers or bids to procure space by lease for the Federal

Government. Each such solicitation shall specify any special requirements of building design, configuration, or location.

"(2) In evaluating offers and bids under this subsection, the Administrator shall take into account proposed rental costs and services offered, overall quality, design, and safety of the buildings, energy efficiency, and their relative conformity to the requirements of this section and section 22 of this Act and section 10 of the Public Buildings Act Amendments of 1983.

"(i) The Administrator shall provide a copy of the lease agreement entered into between the Federal Government and the owner of each leased building, and subsequent additions or revisions to the lease agreement, to the highest ranking official in the leased building of each Federal agency occupying space in the building.

"(j)(1) Any decision by the Administrator to locate or relocate an office of a Federal agency in an area shall be made after early and effective consultation with local elected officials in such area and the head of such Federal agency. In locating or relocating a Federal agency office within a metropolitan area, the Administrator shall give preference to distressed areas identified by local officials in redevelopment plans or other appropriate plans and shall take into account, among other factors, the following:

"(A) the geographic location of the population to be served;

"(B) the appropriateness of the location with respect to the service being rendered;

"(C) the availability of public transportation; and

"(D) the availability of existing or planned housing which is adequate to meet the needs of present and prospective Federal employees and is available on a nondiscriminatory basis.

"(2) Whenever the Administrator proposes or receives a request to relocate an office of a Federal agency from one place within a metropolitan area (as defined by the Administrator in regulations) to another place within such area and the rental costs of such other place, when added to the amount determined by dividing the cost of relocating to such other place by the term of the lease to be entered into for such other place, exceed by more than 10 per centum the costs of remaining at the current location, the Administrator shall submit a report of such proposed relocation to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate. The Administrator shall not carry out such relocation before the thirtieth day following the date on which such report has been submitted to each such committee.".

(d) Section 10(a) of the Public Buildings Act of 1959 (40 U.S.C. 609(a)) is amended by striking out "The" and inserting in lieu thereof "Subject to annual authorization required by section 11(b) of this Act, the".

(e) The Public Buildings Act of 1959 is amended by striking out "Committee on Public Works of the Senate and House of Representatives" and "Committee on Public Works of the Senate or House of Representatives" wherever they appear and inserting in lieu thereof at each such place "Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation of the House of Representatives" and "Committee on Environment and Public Works of the Senate or the Committee on Public Works and Transportation of the House of Representatives", respectively.

SEC. 4. (a) Subsection (a) of section 11 of the Public Buildings Act of 1959 (40 U.S.C. 610(a)) is amended by adding at the end thereof the following new sentence: "Such report shall include, but is not limited to—

"(1) an inventory of all public buildings, including for each building its location and the amount of space and number of employees assigned to each Federal agency;

"(2) an inventory of locations of Federal agency offices in leased buildings, including for each leased location its annual leasing costs, total expected leasing costs over the remaining term of the lease, and the amount of space and number of employees assigned to each Federal agency;

"(3) a list of leases with respect to which waivers have been made under section 5 of the Public Buildings Act Amendments of 1983;

"(4) a list of leases and lease renewals executed;

"(5) a list of delegations of authority made by the Administrator pursuant to section 15 of this Act;

"(6) a report on activities undertaken pursuant to section 210(a)(6) of the Federal Property and Administrative Services Act of 1949 or by transfer of funds from any Federal agency;

"(7) a list of projects for which preliminary engineering and design have been carried out under this Act and the cost of the preliminary engineering and design for each of such projects; and

"(8) a list of options to buy land acquired under this Act, including their cost and status.".

(b) Section 11 of the Public Buildings Act of 1959 (40 U.S.C. 610) is amended by redesignating subsection (b) (and any references thereto) as subsection (f) and by inserting after subsection (a) the following new subsections:

"(b)(1) The Administrator shall submit to Congress, not later than the fifteenth day after Congress convenes each year, a program, for the first fiscal year beginning after such date, of projects and actions which the Administrator deems necessary to carry out his duties under this Act. Such program shall include, but not be limited to, the following:

"(A) a plan for accommodating the public building needs of the United States for such fiscal year and the next succeeding five fiscal years;

"(B) a list, in priority order, of construction, alteration, and acquisition projects for which authorization is requested for such fiscal year, including a description of the project and the number of square feet of space involved;

"(C) a list, in priority order, of lease and lease renewals for which authorization is requested for such fiscal year;

"(D) a list of all public buildings proposed in such fiscal year to be vacated in whole or in part, to be exchanged for other property, or to be disposed of;

"(E) a proposed budget for such fiscal year for the Public Buildings Service (including but not limited to a proposed budget for such fiscal year for the repair and maintenance of public buildings and the total amount of funds proposed to be expended by the Administrator for leasing space in such fiscal year);

"(F) a description of how the projects and leases included in the program, separately and together, conform to the provisions of this Act and the estimated annual and total cost of each project and lease;

"(G) a list, in priority order, of any acquisitions of lands, interests in lands, or options to buy land for which authorization is requested for such fiscal year; and

"(H) a list, in priority order, of projects and sites for which authorization to carry out preliminary engineering and design is requested for such fiscal year.

"(2)(A) Except for a project or lease for which a prospectus must be transmitted to Congress under section 7 of this Act, no appropriation shall be made for any fiscal year beginning after September 30, 1984, by Congress or obligated by the Administrator to carry out the purposes of this Act (including, but not limited to, real property management and related activities) unless such appropriation has been authorized by a statute enacted after the date of enactment of the Public Buildings Act Amendments of 1983.

"(B) In order to carry out the purposes of subparagraph (A), and in accordance with the Budget Control Act of 1974, the Committee on Environment and Public Works of the

Senate, and the Committee on Public Works and Transportation of the House of Representatives shall report to the Senate and the House of Representatives, respectively, by May 15 of each year, a bill authorizing appropriations for carrying out the purposes of this Act (including, but not limited to, real property management and related activities) for the fiscal year beginning on October 1 of such year. After the date such a bill is reported to the Senate each year, it shall be in order in the Senate to consider an amendment to such bill proposing a project or lease for which a prospectus must be transmitted to Congress under section 7 of this Act, only if such amendment has first been approved by a resolution adopted by the Committee on Environment and Public Works of the Senate.

"(C) For purposes of section 7 of this Act, a project or lease for which the Administrator has transmitted to Congress a prospectus under section 7 of this Act or a survey under subsection (f) of this section shall be deemed to have been approved by resolution adopted by the Committee on Environment and Public Works of the Senate or the Committee on Public Works and Transportation of the House of Representatives if such Committee reports a bill authorizing such project or lease.

"(D) It shall not be in order in the House of Representatives to consider any bill containing any annual authorization required by subparagraph (A) of this paragraph which also contains any provision authorizing or approving a project, or entry into or renewal of a lease, for which a prospectus must be transmitted to Congress under section 7 of this Act.

"(3)(A) If a prospectus for a project to be carried out, or a lease to be entered into or renewed, in any fiscal year must be transmitted to Congress under section 7 of this Act, the Administrator, whenever possible, shall transmit such prospectus to Congress together with the annual program for such fiscal year.

"(B) The Administrator shall not transmit, after April 15 of any calendar year beginning after the date of enactment of the Public Buildings Act Amendments of 1983, to Congress any prospectus for any project or lease not listed in the annual program for the first fiscal year beginning after such April 15, except a prospectus for a project of lease resulting from circumstances unforeseeable at the time the program was submitted or resulting from a request under section 11(f) of this Act.

"(c) The Administrator shall keep the Congress fully and currently informed of policies and activities of the General Services Administration within the purview of this Act. In addition, he shall make available to the Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation of the House of Representatives on request, and in such manner as may be necessary to safeguard individual rights or the conduct of criminal investigations, any document, material, information, or report under his jurisdiction.

"(d) The Administrator shall collect and maintain such information as may be necessary to keep the Congress fully and currently informed of the administration of this Act through the Public Buildings Service and to manage activities required under the provisions of this Act. Within one year after the date of enactment of the Public Buildings Act Amendments of 1983, the Administrator shall assure that information is available on—

"(1) for each public or leased building—

"(A) the amount of vacant space;

"(B) the amount of space leased under section 102 of the Public Buildings Cooperative Use Act of 1976;

"(C) building operations costs;

"(D) income derived for the Federal Buildings Fund;

"(E) needed repairs and renovation;

"(F) energy consumed;

"(G) whether it is fully accessible to handicapped persons;

"(H) the percent of the building leased by the Federal Government;

"(I) the total amount of funds that have been expended in improvements or alterations to each leased building; and

"(J) the term of any leases in effect and their expiration dates; and

"(2) the space utilization rate for each Federal agency.

"(e) Within sixty days of the date that any lease approved under section 7 of this Act has been formally entered into, the Administrator shall report to the Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation of the House of Representatives the essential elements of such lease.".

(c) Subsection (f) of section 11 of the Public Buildings Act of 1959 (as redesignated by subsection (b) of this section) is amended (1) by striking out "and the Postmaster General are" and inserting in lieu thereof "is", and (2) by striking out "Committee on Public Works of the Senate or the Committee on Public Works of the House of Representatives" and inserting in lieu thereof "Committee on Environment and Public Works of the Senate or the Committee on Public Works and Transportation of the House of Representatives".

(d) Section 7(a) of the Public Buildings Act of 1959 (40 U.S.C. 606(a)) is amended by inserting ", subject to section 11 of this Act," after "the Administrator shall".

(e) Section 12(a) of the Public Buildings Act of 1959 (40 U.S.C. 611(a)) is amended by inserting ", subject to section 11 of this Act," before "to submit".

(f) Section 210(f)(2) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 490(f)(2)), is amended by striking out "Moneys" and inserting in lieu thereof "Subject to annual authorization required by section 11(b) of the Public Buildings Act of 1959, moneys".

(g) The amendment made by subsection (a) of this section shall apply to reports submitted to Congress after January 31, 1984.

SEC. 5. The Administrator of General Services may, when he deems it appropriate, waive the application of the 15 per centum limitation contained in section 322 of the Act entitled "An Act making appropriations for the legislative branch of the Government for the fiscal year ending June 30, 1933, and for other purposes" (47 Stat. 412; 40 U.S.C. 278a), approved June 30, 1932, to any lease entered into by the Administrator of General Services after the date of enactment of this Act.

SEC. 6. (a) Section 102(a)(2) of the Public Buildings Cooperative Use Act of 1976 (90 Stat. 2505) is amended by striking out the semicolon at the end thereof and inserting in lieu thereof the following: ", except that at no time shall more than 10 per centum of the space in any public building be used for such facilities and activities;".

(b) Section 102 of the Public Buildings Cooperative Use Act of 1976 is amended by adding at the end thereof the following new subsection:

"(c) The Administrator may waive the 10 per centum limitation on the use of public buildings set forth in subsection (a)(2) of this section in accordance with the provisions of this subsection. If the Administrator determines that it is in the public interest to waive such 10 per centum limitation with respect to any public building, the Administrator must submit a copy of such proposed waiver to the Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation of the House of Representatives at least thirty days before such waiver is proposed to be made. Such waiver shall not be made if either such committee disapproves such waiver during the thirty-day period beginning on the date on which such waiver is submitted to such committees.".

SEC. 7. Section 410 of the Public Buildings Act of 1949 (40 U.S.C. 298d) is amended by adding at the end thereof the following new sentence: "Notwithstanding any other provision of this Act or of any other law, the Administrator of

General Services shall not, after the date of enactment of this sentence, name or otherwise designate any building under the custody and control of the General Services Administration for any individual, living or dead.".

SEC. 8. (a) Section 10(c) of the Public Buildings Act of 1959 (40 U.S.C. 609(c)) is amended by inserting "or alteration" after "construction" each place it appears in such section.

(b) Section 12 of the Public Buildings Act of 1959 (40 U.S.C. 611) is amended by striking out subsection (c) and redesignating subsections (d) and (e), and any references thereto, as subsections (c) and (d), respectively.

SEC. 9. The Public Buildings Act of 1959 is further amended by adding at the end thereof the following new sections:

"SEC. 19. Subject to annual authorization required by section 11(b) of this Act, the Administrator is authorized to make emergency repairs to any public building. Whenever such an emergency repair is made the Administrator shall promptly notify the Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation of the House of Representatives of the repair and the cost of the repair.

"SEC. 20. (a) The Administrator shall carry out the functions to construct, acquire, alter, lease, and assign and reassign space in, buildings and sites to meet the public buildings requirements of the United States, through the Public Buildings Service established in subsection (b) of this section.

"(b) There is hereby established in the General Services Administration a Public Buildings Service. The head of the Public Buildings Service shall be the Commissioner of Public Buildings who shall be appointed by the President, by and with the advice and consent of the Senate. The Commissioner of Public Buildings shall be compensated at the rate payable for level IV of the Executive Schedule (5 U.S.C. 5332).

"(c) There shall be within the Public Buildings Service a supervising architect appointed by the Administrator and compensated at a rate not to exceed the rate payable for level V of the Executive Schedule (5 U.S.C. 5332). The supervising architect must be a licensed architect and shall supervise all design activities of the Public Buildings Service and shall perform such other duties as the Commissioner of Public Buildings shall designate.

"Sec. 21. Any dollar amount which is required to be adjusted under this section, shall be adjusted by the Administrator annually to reflect the percentage increase or decrease in construction costs during the preceding calendar year, as determined by the composite index of construction costs of the Department of Commerce.

"SEC. 22. (a) Notwithstanding the provisions of section 210(h)(1) of the Federal Property and Administrative Service Act of 1949, the Administrator shall not make any agreement or undertake any commitment that will cause the construction of any building other than a building which will be publicly owned by the United States until the Administrator shall have by regulation established detailed specification requirements for any building which is to be constructed for lease to and predominant use by the United States.

"(b) The Administrator may only procure the construction of any building which is being constructed for lease to and predominant use by the United States by publicly soliciting competitive bids.

"(c) The Administrator shall inspect every building to be constructed for lease to and predominant use by the United States during the construction of such building in order to determine that the specifications established for such building are complied with.

"(d) Upon completion of a building constructed for lease to and predominant use by the United States, the Administrator shall evaluate such building for the purpose of determining the extent, if any, of failure to comply with the specifications referred to in this section. The Administrator shall insure that any contract entered into for such a building shall contain provisions permitting the reduction of rent during any period when such building is not in compliance with the specifications.

"SEC. 23. In the design, construction, acquisition, renovation, and management of public buildings, the Administrator shall assure that, to the maximum extent possible, such buildings—

"(1) conform to or complement the scale of existing or planned surrounding buildings;

"(2) conserve energy;

"(3) provide efficient and productive interiors, including public reception areas; and

"(4) provide sufficient parking space for Government motor vehicles, visitors, and handicapped employees, and such other parking space for employee vehicles as is consistent with the transportation policy of the United States.

"SEC. 24. Before requesting the relocation of an office of a Federal agency from one area to another area, the head of such Federal agency shall consult the Administrator of General Services concerning such relocation.

"SEC. 25. No construction or alteration of a public building or acquisition of a building shall be commenced by the Administrator unless an appropriation has first been made for the estimated cost of completion of such construction, renovation, or acquisition in the fiscal year for which such appropriation is authorized. No lease for a term in excess of five years shall be entered into unless an appropriation has first been made for the maximum cost of such lease over its entire term in the fiscal year for which such an appropriation is authorized.".

SEC. 10. (a) Notwithstanding any other provision of law, except as provided in subsection (b) of this section, neither the Administrator of General Services nor any other officer or employee of the United States shall construct, purchase, lease, or otherwise acquire any space for any department, agency, or instrumentality of the United States after the date of enactment of this Act in the Greater Washington, District of Columbia, metropolitan area unless the Administrator shall have first given full consideration to the possibility of locating such department, agency or instrumentality outside the Greater Washington, District of Columbia, metropolitan area.

(b) Except as otherwise specified by law, the headquarters offices of each department and major independent establishment in the executive branch shall be located in the Greater Washington, District of Columbia, metropolitan area and, if applicable, in conformance with the comprehensive plan prepared and adopted pursuant to the National Capital Planning Act of 1952.

(c) For purposes of this section, the term "Greater Washington, District of Columbia, metropolitan area" means the District of Columbia and the territory adjacent thereto within a radius of thirty miles from the United States Capitol Building.

SEC. 11. (a) Section 210(j) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 490(j)) is amended by striking out the second sentence and inserting in lieu thereof the following new sentence: "Such rates and charges shall be established for each public building, and for each building containing space leased by the Administrator on behalf of the United States, no more frequently than once each year at a level approximating commercial rates and charges for space and services of comparable quality, but in no case less than the anticipated costs of providing space and services (including amortized construction costs or leasing costs).".

(b) Section 210(f) of the Federal Property Administrative Services Act of 1949 (40 U.S.C. 490(f)) is amended by striking out paragraph (4) and inserting in lieu thereof the following new paragraph:

"(4) There is authorized to be appropriated to the fund such sums as may be necessary for the real property management and related activities of the Public Building Service.".

SEC. 12. Nothing in this Act and the amendments made by this Act shall be construed to affect the authorities granted in sections 5, 6, and 8 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403f, 403g, and 403j).

TO ESTABLISH CERTAIN PUBLIC BUILDINGS POLICIES OF THE FEDERAL GOVERNMENT

THURSDAY, JULY 28, 1983

House of Representatives,
Subcommittee on Public Buildings and Grounds,
Committee on Public Works and Transportation,
Washington, D.C.

The subcommittee met, pursuant to notice, at 2 p.m., in room 2154, Rayburn House Office Building, Hon. Robert A. Young (chairman of the subcommittee) presiding.

Mr. Young. The Subcommittee on Public Buildings and Grounds will please come to order.

The subcommittee is meeting today to consider H.R. 630—a bill to establish the Public Buildings Service in the General Services Administration, and for other purposes; and a thorough review of the General Services Administration leasing program and its impact on cities around the country.

As chairman of the subcommittee, I would like to state that it is the intention of the Chair to hold additional hearings on H.R. 630, a bill sponsored by our distinguished committee colleague and former chairman of the Subcommittee on Public Buildings and Grounds, the Honorable Elliott Levitas. Hearings will continue, after the recess, so that members not familiar with all the policies of the General Services Administration can become thoroughly familiar with existing practices.

I do recognize that some changes in the basic act are necessary, since it appears all we have been requested to do thus far this year is approve lease prospectuses, since no funds are available for direct Federal construction.

As members may be aware, Congressman Elliott Levitas has worked long and hard on a public buildings reform bill. I understand that during the 96th Congress our Committee went to conference with the Senate on a major GSA reform bill which Congressman Levitas sponsored. However, an agreement was not reached.

Needless to say, Elliott will be a great help to us in recognizing what changes are necessary to the Public Buildings Act of 1959, as amended.

Mr. Young. Before proceeding I would like to make a general observation:

Namely, since being elected chairman of the Subcommittee on Public Buildings and Grounds, I have become quite concerned and find it highly questionable that leasing appears to be the predominant method by which the General Services Administration obtains needed space. Over the long run it seems conceivable to me that in the majority of cases, Government ownership would be the least expensive alternative.

Yet, the current trend is exactly the opposite.

I am cognizant of the fact that OMB Circular A-104 contains the cost comparison analysis formula which is to be used when making a decision to construct or lease comparable space.

However, based on several reports, it appears there are a number of factors contained in that cost comparison formula which make it biased toward the leasing alternative.

As chairman of the subcommittee, I am hopeful we can find a solution to overcome this bias and move forward with the ownership of Federal buildings, either by direct Federal construction or the acquisition of existing buildings.

I understand you have brought charts with you today to explain the process and how it works; therefore, perhaps we can attempt to address some of the problems in the existing analysis.

The Chair will now recognize Congressman Levitas for comments and questions on H.R. 630.

Mr. LEVITAS. Thank you very much, Mr. Chairman.

And I take this occasion to sit here for several reasons: the first of which, is I like sometimes to feel the atmosphere of sitting where the money is at these hearings, and getting accustomed to that type of environment. [Laughter.]

The other reason is I appreciate your and Mr. Shaw's attention to this matter. And I want to be in a position to have a dialog with you about it.

H.R. 630 is the latest version of some legislation that we have had in Congress now for 4 or 5 years. At one point this restructuring of the Public Buildings Act actually got to the point of conference. And it—we failed to reach agreement on one point, which I will mention; and I think that has been ironed out now.

But the bill, H.R. 630 is a proposal for a comprehensive restructuring of the Public Buildings Program.

And I am particularly interested that you and Mr. Shaw and other members of the committee are taking a look at it now; because, as I will explain in 1 minute, this is to me one of those pieces of legislation—not that I am the author of it—but just from afar it is so obviously appropriate and needed, that I'm amazed that we haven't done it yet.

It is one of those things that if you went back and talked to constituents in your community, and said that we are about to pass a bill that did this, that, and the other which is in H.R. 630, they would find it unbelievable that that wasn't already the way government works.

And for that reason I hope that we will get on with it this year.

One of the problems that I think we've had in the past I say to both of you is the fact that membership on the subcommittee tends to be rather short term. For various reasons, the ranking member and chairman, after a term, at most two terms, move on to another subcommittee; and we're back at ground-zero, which is one of the reasons that we have to apparently start off during each Congress and go back through this whole process again.

Therefore, while I'm going to describe the features of this bill generally, I really do urge you to take a look at the hearings which were held on H.R. 7579 in 1980, where we discussed this, and the transcript of the hearinqs that were held, I believe, in 1981—is that correct? 1981. I think Mr. Carmen testified at that time.

This matter has been discussed at some length.

In addition to that, there has been at least one, and I believe two, GAO reports on the subject, and a recent June 1983 Congressional Budget Office study on the subject.

I mention that simply to say, I hope you will take the time to look at it, because of your responsibilities, since we're not plowing new ground. We are talking about something today that would have saved the taxpayers millions of dollars if we had it 3 or 4 years ago.

And if we wait another year or so, it's just costing us more money.

Now, let me just touch on some of the features of the bill; the major features—and I also want to say at the outset, that in light of recent developments and the Supreme Court decision, there needs to be some changes made in the bill; and at the proper time I will be offering some amendments to address that, as well as to address the feature that I have discussed with Senator Stafford and Senator Moynihan to resolve that point of contention that held up the conference in the 96th Congress.

First of all, at the centerpiece of this legislation, is a proposal to set in place a mechanism for time-financing for construction of acquisition of public buildings, which essentially would let GSA borrow funds from the Treasury for the construction or acquisition of space to be paid for over a period of time.

And there are certain restraints built in to the legislation as to how much can be borrowed and what the procedures are and what the congressional role is; and I am certain that it is not an open-ended thing, which obviously it won't be as long as we've got our system of prospectus approval or authorization in effect.

Now, why do we need time financing?

Let me go back to what I said earlier: I would suggest if you go home to your community and ask any developer, any building, or, for that matter, any homeowner, how did you buy your house or building? Did you pay cash for it? Or did you get a mortgage on it?

Well, you might find one or two people who built a building for cash, but my guess is that 98 percent of the people built their home or building on a mortgaged basis.

I remember one former Administrator or Commissioner of Public Buildings said that if we didn't have that system in effect, most people would still be living in tents—obviously; because that's the way the thing works.

But a lot of people don't believe the Federal Government cannot buy a building or construct a building on a mortgaged basis—but the Government can't do that.

We either have to pay cash, or we have to lease the space, even though this committee and the Senate committee and the GAO and the Congressional Budget Office have all said that construction of buidings is—where appropriate, and I emphasize "where appropriate"—the most cost-effective way for the taxpayers to provide Federal space; the only way we have to build or acquire a building is to purchase—unless we lease.

Now; the time-financing provision simply would permit us to do what people do in the private sector.

If you look over the last several years, 8 or 10 years, or the last few administrations, on how much money is made available for construction, compared to the space needs, and even the recommended construction projects, there is no money there to do it. There is hardly enough money to meet a third or a tenth of the prospective construction plans that GSA sends out.

So we're not building buildings. We're not building buildings because, in order to do so, you've got to pay cash on the barrel, upfront, or else you have to turn to the lease market.

Now, what that has done, obviously, has created the problem that Mr. Haase is going to talk to for the 13th and his predecessors for the 12th and 13th time, and their predecessors, and their predecessors—that we are now, you know, at the $1 billion per year rent receipt way of providing Federal space. And it's going to continue to increase.

So all I suggest with time financing is to give the taxpayers an option to utilize this mechanism where appropriate to provide space by time financing as an alternative to construction through cash payment or through leasing.

Now, if we don't do that, you're going to be here next year, looking at more leases, more leased construction, and another book full of rent receipts and nothing for the taxpayers—and, according to GAO, to CBO, to this committee and the Senate committee, at a higher cost to the taxpayers.

We had testimony before this committee on a lease recently in San Francisco, I believe it was—yes—where the leased costs were something like over the period of time $40 million more than they would have been if we had acquired by construction.

Now, who's paying that?

The taxpayers are paying it.

That's who's paying it.

So, I mean, I don't know how to get it down to the gut level any better than that: that's what we're talking about.

Now, who is opposed to this?

Let me tell you who is opposed to it, because that's a good question for us politicians to ask:

There are essentially two sources of opposition. One source of opposition is the—and I don't think it's passionate—but it's still opposition; it's the building owners and management people who build buildings. They like to lease space so, therefore, anybody who talks about building Federal space is threatening in some sense. So they are opposed to it.

I'll let them categorize their own opposition.

But I don't propose building all the buildings. I am suggesting that where appropriate we build them, where you need it, you build it; and where you don't, you lease it.

The private sector ought to provide a significant and major portion of the space we need in leasing. But where we can save money and use a federally owned project, we ought to be in a position to do it. Today we are not.

So I recognize their concerns, but I am not trying to take them out of the picture. I am simply saying we need to have the option to use when we should be using it as stewards of the public trust and the Public Treasury.

And my bill does not do what the Senate approach is, to mandate a certain percentage of leased-versus-ownership; it simply gives GSA an optional tool to use in considering where they can save money and do the best job.

Now, the other source of opposition to this is a very interesting one, and, Mr. Shaw, I want to direct it to you primarily, because it now lies in the bossom of this administration's OMB.

They are opposed to it.

The last administration was opposed to it for a while until we worked on them a little bit, and then they turned around and came out in favor of it.

But here's why OMB is opposed to it: There's two reasons:

And I think one of them at best is fraudulent. And I use the word advisedly—"fraudulent"—and it's the same thing that Dave Stockman would have condemned from the steps of the Capitol in his former life.

Their argument is that if you do time financing, that what you are doing is adding obligations that the Federal Government has to pay off; you are creating an obligation in debt, if you will, that the Federal Government has to pay.

And that shows up on the budget, and that shows up on the deficit.

And not wanting to increase the deficit, and not wanting to increase the debt, OMB is opposed to it.

Now, let's analyze that: When you sign a long-term lease for 5 years or 10 years or 20 years, you have exactly the same obligation to pay for that lease as you would have if you signed a note to pay for the construction.

What's the difference between being obligated to pay a rental payment for a period of 5, 10, 15, or 20 years, than there is to repaying a note for 5, 10, 15, or 20 years?

There is absolutely none.

The obligation to the taxpayers—they're still on the hook, one way or the other.

It comes in cheaper if you build, it saves you money, but you've got the same obligation.

But the fraudulent part of it is that because of the way OMB keeps books and the way the Government does accounting, when you make a lease you only have to include in your obligation side of the ledger the annual payment, the grossed up obligation is not there—even though it is there, even though you got to pay it off; and you're charging it to your grandchildren—you got to pay it off; but it doesn't show up in the budget.

So they can come in an say we haven't really done a heck of a lot, we've just incurred a billion dollars this year. But that billion dollars transfers—translates—into $3 billion or $4 billion or $5 billion that somebody is going to have to pay. It's dishonest not to do it that way, plus the fact that it costs you more.

And so when they say it adds to the national debt, if you have time-financing, and doesn't if you are signing a lease, I suggest that they're blowing smoke in your face. And they're certainly blowing smoke in the taxpayers' faces.

And why can't we be honest about it, particularly when we get a cheaper deal?

So I suggest to you that the time-financing mechanism makes sense.

The other things that the bill does—I'll be real quick about it—is, first of all, the legislation codifies the systems which would require the Administrator of GSA to submit to Congress a report detailing all projects and actions to which GSA plans to request authorization during the following year.

Another thing that the bill does is it raises the threshold on projects for which prospectus approval must be obtained. I think it's $500,000 now, it raises it to $1 million; that $500,000 figure was put in many years ago; it's never been adjusted upward. This would adjust it to $1 million and thereafter index it to the economy so that on relatively smaller projects the prospectuses would not be required.

Another thing that the bill does that is rather important in my judgment was the thing that Mr. Sampson alluded to earlier. It authorizes the Administrator to conduct preliminary engineering and design of construction-alteration projects prior to total project approval; and the design funding, of course, would be subject to authorization.

Well, what that means is this—that today when GSA comes up to us and asks for approval of a prospectus, particularly on a construction or an alteration project, they cannot be accurate. They can't tell us what the facts are, because they don't know.

They haven't done the design work. They haven't done the engineering. They haven't got a field project out there. They got a dream project out there. And they do the best they can.

And they come in and they give us numbers, that if you asked them today to justify those numbers, they couldn't do it any more than you could decide how much it was going to cost you to build a project that you haven't put pencil to paper on on the design and engineering.

I am suggesting that through this we not only get honest figures when the GSA comes up here, but we save money in the long run because the projects that are no longer feasible, we know that before they get down the line; and second, another thing is we will reduce from about —I think the figures were 6 or 7 years—down to 3 years the period of time in which a Federal building can be constructed.

So we save time, that beats inflation; and we've got honest figures.

I think that is an obvious thing. Nobody would go to their banker to get a loan without that information. GSA comes to us and we give it to them all the time. A board of directors would fire you if you ran your bank that way. We do it as a matter of law, we do it.

Another thing, Mr. Young, Mr. Shaw, if you went to your constituents and talked about leasing property, long-term leasing, and you had an opportunity to lease an office building or a shopping center or something like that for a period of time, and you said, now, at the end of that period of time, to the developer or builder, after you've gotten your investment out, I want an option to buy that building. I want to take an option to buy the building.

Or let's look about the idea of locating a piece of property: you know you are thinking about buying a piece of property or building a Federal building in a certain community; but you are not sure and you don't have authorization, and it's a community that's on the rise.

So you want to go in and take an option on some property before the price goes up out of sight.

Did you know that the Federal Government is prohibited from doing that?

They cannot bring us a lease even where the owner is prepared to give us an option to purchase the building at the end of the line; because the Federal Government can't take options, can't go out and acquire property before it increases in value, even though we know we're going to buy it 2 or 3 years down the line or a year down the line.

My legislation would give the Administrator the authority to negotiate for options. And also to acquire by purchase options to buy land as well as at the end of a lease term.

And it further authorizes, gives greater authority to acquire existing structures of the sort we authorized in Dallas, Tex., with less redtape.

Now, the last thing that I'm going to mention, because this is the place that the Senate and the House fell apart when we were in conference several years ago, and that is the fact that the Senate wished to proceed on the basis of exclusive annual authorization.

They want to come in once a year with an authorization bill, and that authorization bill presumably would contain lump sums for different activities, and, indeed, might even list a series of projects by name.

Our position was that that does not retain enough oversight in the Congress of these very expensive projects, and would not give the accountability that we need and we do have and do exercise in this subcommittee over GSA.

So we wanted to retain the prospectus system; the Senate wanted to do away with the prospectus system, which they have already done on lease approvals, and simply have an annual authorization bill.

The general concept of where we are now, and what I have discussed with Senators Stafford and Moynihan, is that we will actually work on a two-track system of procedures.

The Senate would, if they so desire, have an annual authorization bill, handle it the way they want to handle it; and in a way in a sense the way they are really handling it today.

While the House would adopt an authorization bill, no project which would be subject to prospectus approval would be authorized for appropriation until the prospectus was approved.

So we would continue to operate on the same basis we are now with higher thresholds, and simply not authorize funds for appropriation until our prospectuses are approved. So when we go to conference with the Senate on the authorization bill, it's in place. But the House could appropriate no funds, and the appropriation bill contain no funds unless we went through the prospectus process.

The major change in the way we do business today from the way we would do business under the new system is that under the Senate concept there would be a cutoff point, I believe it's May 15, where, if it wasn't approved by May 15, it wouldn't be in the bill. This ties in with the budget process.

I recognize that as a change of the way of doing business, but that still does not prevent this committee from continuing to consider prospectuses throughout the year.

And if it is a prospectus that has significance, or is in need of emergency consideration, we do our business; if the Senate wants to act on it, fine; if they don't, they wait until the next year and put it in the authorization bill the next year.

So we continue to operate under the prospectus system; the Senate would operate exclusively under their authorization; and we would continue to exercise our oversight over GSA in this very important program.

So that's what it is. I don't think I have suggested anything in this legislation except common sense and good business.

And I would just hope that you take advantage of the opportunity now, gentlemen, to get this thing moving along; because, if not, 18 months from now you're going to perhaps be doing some other things and we are going to have to start all over again; and the taxpayers are going to be out another couple of million dollars—for no reason at all.

I appreciate your attention. That's what it's about. I think it's simple, and I would hope we can get it going.

Thank you, Mr. Chairman.

Mr. YOUNG. Thank you. I hope we can get this bill working, and I hope the subcommittee recognizes that; and I think we should take a look at the hearings held in 1980 and 1981, and we advise Members of the Senate that they also take a good look at it.

Mr. Shaw?

Mr. SHAW. Yes.

I would like to explore just a moment the provision which I think is obviously the problem we have with the administration, and that is the constant fight over the deficit.

This is caused by an archaic way of accounting by the Federal Government, whereas a building is not depreciated over its useful life, as the private sector would do.

If we could put this into the budget system for the Federal Government, whereas these types of expenditures are recognized only as to the amount of depreciation that they are eating up, I think that would possibly cure this problem.

Interestingly enough, there is a capital budgeting bill that's going through now that seems to perhaps offer some relief to this problem that maybe should be paralleled with the situation that you are talking about.

No President wants to come up with an extra billion dollars of deficit in his budget, even though—because the end result, quite frankly, he's going to make the next President look good.

From a moralistic standpoint, that's not a good reason; but it's a fact of life, and as politicians we have to look at the facts of life and that's called survival.

But I think that the problem is being caused because we have not given the accounting tools necessary to govern, to bring it into the 1980's with some generally accepted accounting principles, as the private sector works with.

That's one of the areas that I want to look closely at, and perhaps by paralleling with the companion legislation, capital budgeting, maybe that might very well get the support of the administration.

I know that both this bill and the other bill does have good bipartisan support in the House. I don't know what's going on over in the Senate side with regard to the capital budgeting bill; I do know it's moving along at least.

Now, maybe that's the way to go?

The OMB, Jim McIntyre had agreed to do that, and it was right at the end of that administration, so it never got done.

This is an accounting game. If we sold stocks to the taxpayers or bonds to taxpayers using this as a prospectus, the SEC would indict us. Because we're not telling them the truth.

I mean, they are going to pay for it. And they say, well, if you are borrowing money that means you are adding to the deficit.

Where do you think you get money to pay the lease payments?

You know, that's part of that $200 billion deficit that somebody's borrowing money from the public to finance. That's not the only cash item that's being paid out of the revenue.

So I would like to see capital budgeting. I would like to see truth in accounting. I would like to see a new budget process that reflects these phony items realistically.

But what we are talking about is the Senate agrees with us; they'll go along with it, in my opinion. We're talking about saving you and me and all the other taxpayers some real, honest-to-goodness money, which is real money. It's not phony money. It's real money.

Because we are going to come in with providing the same space for a lower cost and have an asset to show for it at the end of the time.

So I really urge you gentlemen, I know what's the position of OMB. I've fought with them for years on this subject. And I know what their position is. And you are not going to change their position until you change the budget process.

I think we got a better chance of changing this than we do of changing the budget process.

Mr. SHAW. I'm sure of that.

I think your comment as to "small fish" is quite correct, but so are piranhas. [Laughter.]

Mr. LEVITAS. Thank you very much, Bob.

Mr. YOUNG. Thank you.

Mr. Haase, do you wish to speak to this now or at the later hearings scheduled after the recess?

TESTIMONY OF HON. RICHARD O. HAASE, COMMISSIONER, PUBLIC BUILDINGS SERVICE, GENERAL SERVICES ADMINISTRATION, ACCOMPANIED BY CHARLES W. SAMPSON, DEPUTY COMMISSIONER FOR REAL ESTATE

Mr. HAASE. For the other hearing, I'd rather, since I just heard about it this morning, I'd rather come back at some later date after reading up on it.

Let me bring you up to date on one thing, though, I would like to inform this committee on the opportunity-to-purchase program.

I advertised two Fridays in the Wall Street Journal for the opportunity purchases in strategic locations where the Government has a presence, where it has a high leasing cost. I have opportunity purchases about a foot high of buildings that represent exceptionally good buys to the U.S. Government.

And I think that is one of the tools that we need to get to where you are talking about, and we are all talking about it; and I have discussed it with each of you.

There's just one basic thing, if you just look at one of these charts here, in San Francisco, I think it's $150 a square foot; if you were to pay $150 to build a building, you can see—here's where we're renting space in San Francisco now (indicating). If you are talking about a 5, and maybe a 4-year payback in terms of buying or building—we need the tools. We've always said that at GSA. And these are some of the tools.

Mr. YOUNG. Fine. Thank you very much.

Mr. Haase, you know, I've asked a couple of times about the status of the GSA management plan; what is the status on that?

Mr. HAASE. You are right, and I, too, am aware of it.

The situation is this: the plan was conceived in good faith, I believe, by those requesting and by GSA in developing it.

Any plan that 2 years of it are operating years, but 5 years out from that are strategic years; is impossible to develop strategic year planning if you do not have some kind of income that you can count on.

Fiscal year 1983 SLUC (Standard Level User Charge) was a freeze of 1982 SLUC levels. In 1984 there is going to be a cap at a specific percent increase.

It is impossible for us to make this plan based on these kind of income figures.

What we are doing right now is taking a hard look at these income figures and what they would generate and coming back to you with some kind of a philosophical statement in the strategic years to say here's what we plan on doing in new construction; here's what we plan on doing in repair and alteration; without being specific as to the line item designations of the buildings.

If I told Congressman Shaw that I was going to build a building in his district in the outyear plan of 1989, he wouldn't give a damn if they had frozen the SLUC for 4 years up to that particular time, in 1989, he'd say: where's my building?

And that's true of everybody. And you really cannot do any planning with the way the SLUC system is going.

Yes, do you want to make a comment on that, Charlie?

Mr. SAMPSON. I'd like to make a comment on the SLUC system and particularly in light of what Mr. Levitas just said to the committee:

If you would envision the public building service as a small business that can only grow through its profits generated, you begin to see very clearly what our restrictions are.

Our SLUC income is the same rent that we charge for something that we own; when that rent is controlled by an outside source, it automatically cuts the income stream down.

We can do nothing without time-financing, without some kind of a building purchase which is cheaper, as we've shown you now, than even new construction is; unless we can guarantee the income stream or have some idea what's there.

Right now there's been some discussion I know in the halls that the SLUC system may be done away with. I think that is fallacious in the extreme.

You talked about obfuscating the true cost to the Government—that does it.

The only reason the SLUC is now of big interest is because the true cost of operating facilities today is well known. If you take it and spread it amongst all the various budgets that exist in the Federal Government, then it will be hidden; and you will go back to the thing where the money gets wasted in various and sundry ways, and take away all the oversight the committee has over that process.

Mr. HAASE. I have for the committee at your request a 5-year runout of the SLUC expenses and the categories and where it's been spent and the square footages, and which I will turn over to the committee.

Mr. YOUNG. I guess the last thing, Mr. Haase, while you are here, according to a Washington Post article of last Saturday, the General Services Administration has proposed to turn over, to transfer, to the Smithsonian Institution the building currently housing the International Trade Commission for use as museum space.

It has come to my attention that the International Trade Commission, although reluctant to relocate, may consider relocation provided the space provided is adequate to meet their needs.

In this regard, I understand that part of the International Trade Commission is currently located in a leased building, known as the Bicentennial Building in downtown Washington, which they feel is in poor condition and as such, are opposed to backfilling their entire operation into the building.

I understand staff of this committee have visited the current building that the ITC is located in, and it is the proposal of the Chair also to visit the building in the near future.

In this regard, prior to a decision being made by this committee regarding the retention or disposal of the ITC building, located at 701 E Street NW, and in view of the fact that the Congress will be recessing for approximately 1 month starting August 5, 1983, Mr. Haase, could you give the subcommittee assurance that no decisions regarding this matter will be implemented prior to the subcommittee having an opportunity to review the issues after the August recess?

Mr. **Haase**. Oh, absolutely, Mr. Chairman.

What we did in the situation was take a last shot, and tried to jog along with the International Trade Commission, telling them what we would do and seeing if they would accept it.

We're going to work with them and everything will come out in the end.

Mr. **Young**. Thank you.

The subcommittee will stand adjourned. We will try to meet next Tuesday.

[Whereupon, at 3:45 p.m., the hearing was adjourned.]

TO ESTABLISH CERTAIN PUBLIC BUILDINGS POLICIES FOR THE FEDERAL GOVERNMENT

THURSDAY, OCTOBER 27, 1983

House of Representatives,
Subcommittee on Public Buildings and Grounds,
Committee on Public Works and Transportation,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:25 a.m., in room 2167, Rayburn House Office Building, Hon. Robert A. Young (chairman of the subcommittee) presiding.

Mr. Young. The Subcommittee on Public Buildings and Grounds will please come to order.

The subcommittee is meeting today to receive testimony from distinguished officials on all policies of the Public Buildings Services of the General Services Administration and on H.R. 630, a bill to establish public buildings policies for the Federal Government, to establish the Public Buildings Service in the General Services Administration, and for other purposes.

Although the General Services Administration is generally known as a housekeeping agency of the Government, its impact on all departments and agencies is strong, in view of the fact that GSA provides space to house such agencies.

Recently, the General Services Administration implemented a new guideline which would reduce the square footage for employees throughout the Government in an effort to reduce housing costs. The GSA has also undertaken efforts in cutting the costs for providing services. Many of the new initiatives at GSA are impressive; however, concerns have been expressed by many, including the House Committee on Appropriations, regarding the constant state of reorganization at the GSA.

The Senate Committee on Environment and Public Works has reported legislation which would abolish the Federal Building Fund, and the House Appropriations Committee, in its fiscal 1984 GSA Committee Report, expressed great concern for the usefulness of the fund and requested the authorizing committee to review the Federal Building Fund in depth. These are just a few of the concerns we hope to address today.

In addition, H.R. 630, legislation sponsored by our distinguished colleague from Georgia, Mr. Levitas, is designed to give the GSA the tools that private industry has in the acquisition of space, and hopefully, today, we will receive interesting and informative comments on this legislation.

As my colleagues are quite aware, Congressman Levitas has been working on perfecting this legislation for quite a few years.

We do have a full agenda today, and therefore, at this time, I would like to welcome all the witnesses and now yield to the ranking minority member of the subcommittee, Mr. Shaw, for an opening statement.

Mr. Shaw.

Mr. SHAW. Thank you, Mr. Chairman.

I, too, would like to welcome the many witnesses that will be with us this morning and throughout the day, to share their views on the Public Buildings Act of 1959 and the legislation which would reform this act, introduced by our distinguished colleague, Mr. Levitas, from Georgia.

As we all know, this is not the first time attempts have been made to make comprehensive reforms to the act of 1959, but hopefully, Mr. Chairman, by our efforts, this Congress will produce the results that so far have evaded all of us.

For nearly 25 years now—which speaks well of the wisdom of the original authors of this act—this act has set the statutory parameters and has ensured congressional oversight of the Nation's public buildings program. I think we all recognize, though, that this act is no longer as effective as it once was, and that the time has come when improved management tools are needed, tools which can only be provided through this legislation and through this committee.

Of all those here today, I think no one would agree with us more than our good friend, Mr. Carmen, Administrator, General Services Administration. In two short years, he has made excellent progress in disseminating public sector management principles throughout the agency, but it is now up to us to supply the necessary management tools to back up those principles. Our increasing dependency on leasing must be curtailed. Alternative methods of financing new construction must be provided, and project planning and approval procedures must be strengthened. The challenge which we now face is whether we are willing to accept the changes which must be made and whether we are willing to make those changes.

Mr. Chairman, I believe the time has come for us to act. I look forward to working with you and the other members on what I consider to be one of the most important pieces of legislation that this subcommittee will handle.

Mr. YOUNG. Thank you very much, Mr. Shaw.

Mr. Clarke, do you have an opening statement you wish to make?

Mr. CLARKE. No opening statement, Mr. Chairman.

Mr. YOUNG. Thank you.

Prior to introducing our first witness, I would like to read from a letter from the Office of Management and Budget Director, Mr. Stockman. He says:

> It is my understanding that the Treasury Department and GSA will be appearing . . . and their testimony will have been cleared by the Office of Management and Budget and will represent the Administration's views.

Our first witness this morning will be Mr. James G. Mitchell, Associate Director, General Government Division, General Accounting Office. He will be accompanied by Mr. Carmen Smarrelli and Mr. Pat Maguire.

The full text of your prepared statement will appear in the record at this point.

[Statement referred to follows:]

UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

FOR RELEASE ON DELIVERY
OCTOBER 27, 1983

STATEMENT OF

JAMES G. MITCHELL

ASSOCIATE DIRECTOR

GENERAL GOVERNMENT DIVISION

BEFORE THE

SUBCOMMITTEE ON PUBLIC BUILDINGS AND GROUNDS

COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

HOUSE OF REPRESENTATIVES

ON

H.R. 630, A BILL TO ESTABLISH PUBLIC BUILDINGS POLICIES FOR THE FEDERAL GOVERNMENT, TO ESTABLISH THE PUBLIC BUILDINGS SERVICE IN THE GENERAL SERVICES ADMINISTRATION, AND FOR OTHER PURPOSES

Mr. Chairman and Members of the Subcommittee:

We are pleased to appear before you to discuss H.R. 630, referred to as the Public Buildings Act Amendments of 1983. Among other things, the proposed legislation would revise the method of financing public building construction and would require emphasis on, and disclosure of, GSA's long range planning for its building program.

We are pleased that a number of the bill's provisions are consistent with recommendations contained in our reports. It is primarily in the context of our prior work related to GSA's public buildings program that we would like to address certain provisions of the proposed legislation.

PUBLIC BUILDING FINANCING

Section 3(c) of H.R. 630 would authorize GSA to borrow from the Treasury for periods up to 30 years (time financing) to finance the acquisition or construction of any public building.

We have reported that for several years, funds for construction, either through direct appropriations or from the GSA Federal Buildings Fund, have been limited. As a result, GSA has relied on leasing as the only practical method available to meet space needs.

Prior to fiscal year 1975, public building construction and other costs were financed primarily through direct appropriations to GSA and agencies did not pay rent for space occupied. Public Law 92-313 established the Federal Buildings Fund to finance GSA's acquisition and operation of government-owned and leased buildings. The Fund started operating in fiscal year 1975. Federal agencies occupying space in GSA-controlled buildings pay standard level user charges (rents) based on comparable commercial rates, which are deposited in the Fund and then made available in annual appropriation acts to GSA for construction, leasing, real property operations, and other activities.

In December 1981 we reported (PLRD-82-18) that the Fund had not accomplished the two primary objectives used as a basis for its establishment. It had not met its objective of providing $200 to $225 million a year for construction, which GSA anticipated when the Fund was established. On the average the fund has generated less than $100 million a year.

Moreover, concerning the Fund's second primary objective of improving agencies' space usage, we reported there was no evidence of appreciable improvement in space usage because tenant agencies had to budget and pay for space they occupied. In sponsoring legislation to establish the Fund, GSA said that charging agencies rent would result in savings because federal agencies would use less space if they were accountable for it.

We said in our 1981 report that, in view of the fact that the Fund had not accomplished the two primary objectives used as a basis for its establishment, the Fund could be abolished. However, we also said that before abolishing the Fund an effective alternative funding mechanism should be established to take its place.

The Fund could be abolished and replaced by direct appropriations to GSA. This procedure was in effect before the Fund was established, but it was not completely effective since funding for construction was limited. Direct appropriations to GSA would eliminate the need and cost for agencies to plan and budget for space and real property services obtained from GSA. Tenant agencies would not object to this approach because once again they would obtain free space and services. The requirement for GSA to bill tenant agencies quarterly for space and services and to make periodic appraisals and rental computations would be eliminated.

If the Fund were eliminated, the cost of space and related services would no longer be identified as part of the total program cost for each tenant agency. In other words, the benefits of performance budgeting would be lost since total program costs would not be identified in agencies' accounts. If travel, personnel, and administrative costs are included as part of the program costs, then it appears reasonable to also include space costs.

Another approach would be to continue with the Federal Buildings Fund and augment its resources when needed with borrowings from the Treasury or with direct appropriations.

Whatever approach is followed, it will be difficult, because of budgetary constraints, to reverse the trend toward increased leasing and provide for a viable construction program. Leasing has a short-term budgetary advantage because the impact is spread over several years whereas the impact for construction is immediate and up front.

FULL FUNDING

Section 9 of the bill would apply the full funding concept to leases for terms in excess of 5 years. The maximum cost of such leases over the entire term would be recorded as budget authority in the first year.

We have reported and testified that as a matter of budget policy we favor the full funding concept because it more accurately discloses the total obligations associated with a project. Application of the full funding concept to construction or acquisition projects with large initial outlays has a significant impact on the national budget in the years that appropriations are approved. In times of unusually large demands on the budget, construction projects, because of their impact, are the first to be eliminated.

Currently, the full funding concept applies to construction projects but not to leasing. The total rental payments on leases (up to 20 years in some cases) to which the government is committed is much greater than the annual lease payments that appear as budget authority in the annual appropriations acts. For example, in fiscal year 1984, annual lease payments are budgeted at $880 million. This amount, if approved, will appear as budget authority in GSA's annual appropriations act, yet the government is committed to over $2 billion in lease costs over the remaining life of these same leases.

The total outlays on a lease project spread over 20 years will be greater than the total outlays for a comparable federally constructed project. Recording the budget outlays in 2 years rather than in 20 increments has a greater impact for the federally constructed project in the first year.

We recognize that it may not be practical to apply the full funding concept to all GSA leases (over $2 billion) in any one year. However, we believe that there should be a consistent application of the full funding concept to both leasing and construction projects. So that the total budgetary impact of either a lease or a construction project is disclosed and compared uniformly, the total costs should be recorded as budget authority in the first year.

Regarding the proposed legislation's restricting the application of the full funding concept only to leases for terms over 5 years, we believe that GSA could avoid the full funding concept by limiting most of its leases to 5 years or less and entering into follow-on leases for continued occupancy of the same space. Therefore, the impact of leasing from a budgetary standpoint would continue to have an advantage over Federal construction.

You may want to reexamine this section and have the full funding concept apply to all future leases.

ALTERATIONS TO LEASED BUILDINGS

Section 3 of the bill would require the Administrator of General Services to submit a report on proposed alterations in leased buildings that exceed $500,000 to the Senate Committee on Environment and Public Works and the House Committee on Public Works and Transportation. Such alterations could not be made if either Committee disapproved the alterations during a 30-day period after the report was submitted by the Administrator.

In our September 1978 report (LCD-78-338), we stated that there is no requirement in the 1959 act for congressional approval of, or reporting of, alteration projects in leased buildings. However, the 1959 act does require prior approval for alterations in government-owned buildings over $500,000. We concluded that alterations to a leased building require closer scrutiny because they may (1) increase the value of the leased building which the government does not own and (2) weaken the government's negotiating position for follow-on leases.

We recommended that the Congress amend the Public Buildings Act of 1959 to require congressional authorization of alterations to leased space which involve a total expenditure in excess of $500,000.

The requirement in H.R. 630 for advanced reporting will give the Congress needed visibility and control over alterations in leased buildings.

Section 3 would also provide that the Administrator may not lease space to accommodate, among other things, major computer operations.

In our 1978 report we stated that GSA spent large amounts of money for altering leased space for computer operations. Some of these alterations were made before leases expired without GSA's attempting to renegotiate the lease term or the rent. We concluded that alterations made shortly before the expiration of the lease is poor strategy and weakens GSA's negotiating position on follow-on leases.

In our January 1983 report (PLRD-83-13), we stated that GSA contracted for major alterations for USIA's Communication Center in leased space at 1776 Pennsylvania Avenue, NW, about 14 months before the lease expired. The total cost of the alterations was $580,000. At the time GSA contracted for the alterations, no move was contemplated. Shortly thereafter, USIA decided to consolidate its headquarters employees in three adjacent buildings at 4th and C Streets, SW. The residual investment in the alterations will be lost when USIA moves the Communication Center to 4th and C Streets, SW.

We agree with the bill's provision that major computer operations not be located in leased space; rather, they should be located in government-owned buildings. However, since so many computer facilites are presently located in leased space and limited government-owned space is available, GSA may not be able to avoid locating some computer operations in leased space.

According to Section 3 of the bill, exceptions to the requirement for not locating major computer operations in leased space must be reported to the Senate Committee on Environment and Public Works and the House Committee on Public Works and Transportation.

COMPETITIVE OFFERS FOR LEASING SPACE

Section 3 of the bill would also require the Administrator to publicly solicit competitive offers or bids to procure space by lease for the federal government. This section is consistent with a recommendation made in our 1978 report (LCD-77-354) that GSA ensure that competition is obtained to the maximum extent practical for both new and follow-on leases.

Generally, leased space is acquired by negotiation rather than advertised sealed bids. Federal Procurement Regulations require that, whenever property or services are to be procured by negotiation, proposals should be solicited from the maximum number of qualified sources. In our 1978 report, we reported that, although it was GSA's policy to obtain competition, only limited competition existed on many lease awards.

ECONOMY ACT LIMITATIONS

Section 5 of the bill provides for a waiver of the 15-percent rental limitation contained in section 322 of the Economy Act of 1932 (40 U.S.C. 278a). Granting the Administrator the authority to waive the 15-percent limitation on rental rates could result in a routine waiver process that, in effect, renders the limitation meaningless.

Section 322 of the Economy Act states that for any building occupied for government purposes the rental will not exceed the per annum rate of 15-percent of the fair market value of the rented premises at the date of the lease. In addition, alterations, improvements, and repairs will not exceed 25-percent of the first year's annual rent. These limitations apply to leases with an annual rent in excess of $2,000 a year.

Section 210 of the Federal Property and Administrative Services Act of 1949, as amended, permits GSA to exceed the 25-percent limitation if the Administrator submits a certificate of determination (waiver) indicating that work in excess of the limitation is advantageous to the government. In other words, under existing legislation the Administrator can waive the 25-percent limitation but he cannot waive the 15-percent limitation on rental rates.

In our September 1978 report (LCD-78-338) we concluded that the 25-percent limitation on alterations in leased buildings is not an effective mechanism for limiting and controlling the amount expended for alterations and we recommended that the

Congress eliminate the provisions of the law relating to the 25-percent limitation. The limitation was exceeded on most leases reviewed. Automatic approval of certificates of determination (waivers) and noncompliance with procedures make the 25-percent limitation ineffective.

In our reviews of GSA leasing activities, we found that application of the 15-percent limitation is sometimes a problem when acquiring small blocks of space in the inner city because very limited or no suitable space is available and that which is available may exceed the Economy Act limitation. For example, GSA had experienced difficulty in leasing Social Security district offices (which average about 5,000 square feet) in part because no suitable space was available.

We suggest that as an alternative to granting the Administrator the authority to waive the 15-percent Economy Act rental limitation, consideration be given to changing the threshold figure from $2,000 to 5,000 or 10,000 square feet. In line with our prior recommendations, we also suggest that the 25-percent limitation on alterations in leased buildings be eliminated.

PUBLIC BUILDINGS PROGRAM PLAN

Section 4 of the bill would require GSA to submit to the Congress each year a program plan for construction, acquisition, alteration, lease and lease renewals, buildings to be vacated, and other information relating to its public building needs. The proposed program plan should provide the Congress with a better overview and visibility over GSA's entire public buildings program.

In prior reports we have commented on deficiencies in GSA's space planning, lease alterations, and lease renewals, deficiencies which can be attributed in part to poor space planning. We have concluded that GSA should allow sufficient time prior to lease expiration for developing alternative space plans. In three of our reports, we commented on cases where GSA paid rent before leased buildings were available for occupancy. In a June 1983 report (PLRD-83-76), we reported that GSA missed exercising lease options which could result in additional cost for higher rent in excess of $30 million.

ANNUAL REPORT

Section 4 of the bill would also require the Administrator to include more information on public building projects and leasing activities in GSA's annual report to the Congress.

In a May 1982 report (PLRD-82-46), we reported that agencies have complained for years about GSA's delays in providing requested space. As a way of overcoming the problem, several agencies have asked the Congress for leasing authority or have requested a delegation of authority from GSA. We found that it took GSA longer than its stated goal of 6 months to complete about half of the agency space requests and longer than 1 year to complete about 30 percent of the requests.

We recommended in our 1982 report that GSA should disclose in its annual report to the Congress information on GSA's performance in filling space requests and factors that impede timeliness. You may want to consider making this a mandatory requirement by including it in the bill.

STANDARD LEVEL USER CHARGES

Section 11 of the bill would amend section 210(j) of the Federal Property and Administrative Services Act of 1949 and require GSA to establish user charge rates for each year for buildings "at a level approximating commercial rates and charges for space and services of comparable quality, but in no case less than the anticipated costs of providing space and services (including amortized construction cost or leasing costs)."

We interpret this revision to mean that GSA could charge an agency the comparable commercial rate or an amount in excess of the comparable commercial rate where the total annual outlays for the space the agency occupies exceed comparable commercial rates. For example, we have reported that purchase contract buildings generate a negative cash flow. The income for these buildings from standard level user charges based on comparable commercial rates is less than the outlays for principal, interest, taxes and operating costs. If agencies are charged more than commercial rates, we believe they will object.

CONGRESSIONAL APPROVAL OF PROPERTY ACQUIRED BY EXCHANGES

Section 2 of the bill provides that no public building valued at over $1 million is to be acquired by exchange without a prospectus being approved. This provision is consistent with prior GAO report recommendations and testimonies. For example, we have reported and testified that any exchange involving the acquisition of public buildings valued at over $500,000 should be subject to either approval by, or advance reporting to, the Congress.

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Mr. Chairman, this concludes my prepared statement. We will be happy to respond to any questions you or other members of the Subcommittee have at this time.

Mr. Young. Please proceed.

TESTIMONY OF JAMES G. MITCHELL, ASSOCIATE DIRECTOR, GENERAL GOVERNMENT DIVISION, GENERAL ACCOUNTING OFFICE, ACCOMPANIED BY CARMEN SMARRELLI, SENIOR GROUP DIRECTOR, AND PAT MAGUIRE, GROUP DIRECTOR

Mr. Mitchell. Yes, sir, Mr. Chairman. I would like to put the statement in the record, but I would also like to summarize, and I can summarize it in about four pages, which I would like to read now, with your permission.

Mr. Young. Please go ahead.

Mr. Mitchell. Mr. Chairman and members of the subcommittee, we are pleased to appear before you to discuss H.R. 630, referred to as the Public Buildings Act Amendments of 1983. We are pleased that a number of the bill's provisions are consistent with recommendations contained in our reports. It is primarily in the context of our prior work related to GSA's public buildings program that we would like to address certain of the provisions of the proposed legislation.

Section 3(c) of the bill would authorize GSA to borrow from the Treasury for periods up to 30 years to finance the acquisition or construction of any public building.

We have reported that for several years, funds for construction have been limited, causing GSA to rely on leasing as the only practical method available to meet space needs.

The Federal buildings fund which was established to finance GSA's acquisition and operation of government-owned and leased buildings has not accomplished the two primary objectives used as the basis for its establishment. It has not met its objective providing $200 to $225 million per year for construction which GSA anticipated when the fund was established. On the average, the fund has generated less than $100 million a year. Further, it has not appreciably improved space usage because tenant agencies have to budget and pay for space they occupy.

In sponsoring legislation to establish the fund, GSA said that charging agencies rent would result in savings because Federal agencies would use less space if they were accountable for it.

We have reported to the Congress that in view of the fact that the fund had not accomplished the two primary objectives used as a basis for its establishment, the fund could be abolished. However, we have also said that before abolishing the Fund, there should be an effective alternative funding mechanism to take its place.

Another of the bill's provisions, section 9, would apply to the full funding concept to leases with terms in excess of 5 years. The maximum cost of such leases over the entire term would be recorded as budget authority in the first year. We have reported and testified that as a matter of budget policy, we favor the full funding concept because it more accurately discloses the total obligation associated with the project.

Currently, the full funding concept applies to construction projects, but not to leasing, and we believe that there should be a consistent application of the full funding concept for both leasing and construction projects. So that the total budgetary impact of either a lease or a construction project is disclosed and compared uniformly, the total cost should be recorded as budget authority in the first year.

Further, while the bill's provisions would restrict the application of the full funding concept for leases with terms over 5 years, we believe the concept should apply to all leases.

Section 3 of the bill would require the Administrator of General Services to submit a report on proposed alterations in leased buildings that exceed $500,000. The report would be submitted to the Senate Committee on Environment and Public Works and the House Committee on Public Works and Transportation. Such alterations could not be made if either committee disapproved the alterations during a 30-day period after the report was submitted.

In a prior report, we concluded that alterations to a leased building required closer scrutiny, because they may increase the value of leased buildings, which the Government does not own, and weaken the Government's negotiating position for following leases. Therefore, we fully support this provision.

Section 3 would also provide that the Administrator may not lease space to accommodate, among other things, major computer operations. This provision is also consistent with our past report's conclusion that altering leased space for computer operations is poor strategy and weakens GSA's negotiating position on follow-on leases. While we believe that major computer operations should be located in Government-owned buildings, since so many computer facilities are presently located in leased space and limited Government-owned space may not be available, GSA may not be able to avoid locating some computer operations in leased space.

Section 3 of the bill would also require the Administrator to publicly solicit competitive offers or bids to procure space by lease for the Federal Government. This section is also consistant with our past recommendation that GSA ensure that competition is obtained to the maximum extent practical for both new and follow-on leases.

Another of the bill's provisions, section 5, would provide for a waiver of the 15-percent rental limitation contained in section 322 of the Economy Act of 1932. We believe that granting the Administrator the authority to waive the 15-percent limitation on rental rates could result in a routine waiver process that in effect renders the limitation meaningless. We suggest that, as an alternative to granting the administrator the authority to waive the 15-percent economy limitation, consideration be given to increasing the threshold figure to which the limitation will apply.

In line with our prior recommendations, we also suggest that the 25-percent limitation on alterations to leased buildings be eliminated.

Section 4 of the bill would require GSA to submit to the Congress each year a program plan for construction, acquisition, alteration, lease and lease renewals, buildings to be vacated, and other information relating to its public building needs. We fully support this provision in that the proposed program plan should provide the Congress with a better overview and visibility over GSA's entire public buildings program.

In prior reports, we have commented on deficiencies in GSA's space planning, lease alterations and lease renewals, which we feel can be attributed in part to poor space planning. Section 4 of the bill would also require the Administrator to include more information on public buildings projects and leasing activities in GSA's annual report to the Congress. We agree and have recommended that GSA disclose in its annual report to the Congress information on GSA's performance in filling space needs and factors that impede timeliness. You may want to consider making this a mandatory requirement by including it in the bill.

Finally, section 2 of the bill, which would provide that no public building valued at over $1 million be acquired by exchange without a prospectus being approved, is consistent with our prior recommendations.

Mr. Chairman, that concludes my summary of the prepared statement, and Mr. Smarrelli, Mr. Maguire and I will be pleased to answer any questions that you or other Members may have.

Mr. YOUNG. Thank you very much for your fine statement, Mr. Mitchell.

I have a series of questions, and probably, if we do not get them all asked this morning, because there are some time limitations for some of the witnesses, would your office respond to some questions that the committee might have in writing?

Mr. MITCHELL. Yes, sir.

Mr. YOUNG. Thank you very much.

The Budget Office in a report stated that long-range planning at the GSA is still in a formative stage, and as such, they are not afforded the opportunity to review different programmatic and budgetary impacts in either the short run or the long run.

As you know, since 1980, GSA has been directed to submit to the House and the Senate an annual plan to be accompanied by prospectuses the 15th day after Congress convenes. To date, we have not received the plan for fiscal year 1984, and in light of these observations, do you believe an annual authorization program would work? Could you please comment on that observation?

Mr. MITCHELL. Well, Mr. Chairman, I think there would have to be improvements to make the annual authorization program work, but it could be workable. I think the Administrator would have to have a clear strategy of what projects were needed. There would have to be a clear review of requirements, there would have to be a clear prioritization of which projects should come first. If all of this is done and laid out in an annual authorization plan, I think it could be workable, as long as you had some flexibility if there were changing requirements to change the authorization plan.

In my experience in looking at the military side, they use the annual authorization very well, and they have used it for years. But you cannot be late, like they, GSA, are this year, if you are going to make the annual authorization plan work.

Mr. YOUNG. Thank you.

Mr. Mitchell, could you comment on the Office of Management and Budget's circular A-104, which established the present value when making a decision on whether to construct or lease space to house Federal agencies? What biases do you feel are built into the analysis which cause the decision to generally go towards a leasing decision?

Mr. MITCHELL. Mr. Chairman, I would like to ask Mr. Maguire to respond to that question.

Mr. YOUNG. That would be fine. Mr. Maguire?

Mr. MAGUIRE. Circular A-104 contains the procedures and assumptions to be used in making a present value analysis. Now, that OMB circular came out in 1972, and it has not been updated since then, so some of the assumptions in A-104 are outdated.

Any present value analysis where future costs are estimated, necessarily involves assumptions and estimates, and the outcome of that analysis will depend upon the assumptions made and the precision of the estimates.

Now, there are three areas where we have commented on the assumptions, which we think are biased in favor of the leasing alternative. One is that the OMB circular assumes that all the outlays for a Federal building will be made the first year—in other words, that tends to overstate the construction cost. In actuality, when you award a construction contract, it takes about 3 years for construction payments are made over a 3-year period. So that is one bias in favor of the leasing alternative.

No. 2, the OMB circular describes that in the Federal constructive alternative, amounts be included each year for repairs and alterations. Now, there is nothing on the leasing side of the ledger for repairs and alterations, and repairs and alterations are made to leased buildings. Therefore, that has a tendency to understate the leasing outlays and overstate the Federal construction outlays.

I think another assumption which has raised a lot of discussion is the discount rate to use, and arguments have been presented to use the rate in the private sector, or the Government's cost of borrowing. GAO has always advocated that we use the Government's cost of borrowing—if you are going to have a 20-year lease, you would use the long-term borrowing rate. And again, the higher the discount rate you use, the more favorable it is to leasing. The lower the discount rate you use, the more favorable it is to construction.

I would like to make one observation here, and that is that the reason why GSA is leasing is not based on an economic analysis. It is a budgetary decision. There is no money there, or limited funds are available either through direct appropriations or through the Federal buildings fund for construction. So the decision is a budgetary decision, and it is not made on the basis of that analysis—although the analysis may come along later on and lend some justification, I guess, to the decision that has already been made.

Mr. YOUNG. Thank you.

Mr. Mitchell, or any of the panel, on page 2 of your testimony, you state, "The Federal building fund has not met its two primary objectives used as a basis for its establishment. Thus, the fund should be abolished." However, you go on to say that, "The benefits of performance budgeting could be lost since total program costs could not be identified in various agencies' accounts."

Over the past few years, the Office of Management and Budget as well as the House Committee on Appropriations have placed limitations on the revenues that could flow into the fund. The House Appropriations Committee for fiscal year 1984 again restricted increases in rentals that agencies could pay GSA for space. In light of the above, what advantages could you foresee if the fund were abolished, and we went back to direct appropriations to GSA for housing government departments and agencies, and second, what disadvantages might you see?

Mr. MITCHELL. Let me first give you the advantages that we see if you were to abolish the fund. The Federal building fund has caused much concern in the whole Federal establishment as well as in the Congress. It would be far more palatable and acceptable to agencies if you did away with the Federal buildings fund. That is the first advantage.

The second advantage, using direct appropriations would be more economical, from the standpoint of administration, to administer the Federal buildings fund is quite costly, both in GSA and within the agencies.

So basically, the two advantages would be that it would be far more acceptable to tenant agencies, and you would get rid of the administrative cost.

However, when you get to the disadvantages of doing away with the Federal buildings fund, it was established because direct appropriations were not doing the job. If you went back to direct appropriations, you would be right back where you started. Direct appropriations were not doing the job when you established the Federal buildings fund, so you would have to have some assurance that now, if you went to direct appropriations, they would be in sufficient amount, both agreeable to the administration and the Congress, to provide the funds that GSA needs. And you cited one of the disadvantages. It would not give you the picture of the cost of operating an agency if GSA is providing buildings and services free to that agency. The cost of travel is considered a cost of operating the agency, the cost of personnel is considered a cost of operating the agency. So the question comes up, why would you eliminate the cost of space and services from the cost of operating that agency. If you went back to direct appropriations, you would lose the performance-based budgeting.

Mr. YOUNG. Thank you.

The other questions I have, if they are not asked by some of the other members, we will probably submit to you in writing.

The gentleman from Florida, Mr. Shaw.

Mr. SHAW. Thank you, Mr. Chairman.

Executive Order 12072, which has now been replaced, required the siting of Federal facilities to aid urban economies. In a letter to OMB dated August 21, 1981, you stated that you believed this order resulted in some increased Federal cost without clear evidence that the local economy substantially benefited.

Would you care to elaborate on that statement?

Mr. MITCHELL. Yes, sir, GSA still gives some consideration to locating facilities in urban areas, but we thought that the way 12072 was being implemented by GSA back in 1981 when we wrote that report, we thought they were going overboard. We thought they were locating, moving agencies downtown into space where it cost them more to make the move than where the agency was already located, plus it was having some adverse impact on the agency's mission by locating them downtown. So we thought that GSA at the time was not giving enough consideration to the adverse impact on missions or to the cost of trying to locate agencies downtown, when in turn, there was no demonstratable evidence that they would create any benefit by locating them downtown.

Mr. SHAW. Regarding the full funding concept for leases no matter what lease term threshold is applied, would there still be a trend to shorter-term leases?

Mr. MITCHELL. Excuse me. I am going to defer that question to Mr. Maguire.

Mr. MAGUIRE. I think the bill has a provision in it to apply the full funding concept to leases over 5 years, and we are of the opinion that GSA could limit the impact of that full funding concept by limiting its leases to 5 years—or, even if you reduce them to 3 years. I think they could limit the impact by writing all 3-year leases. We are suggesting that you apply the full funding to all leases and have no threshold.

Mr. SHAW. Do you think that is going to cause an artificial barrier as far as coming out with some good, long-term leases in those instances where they should be rightfully applied?

Mr. MAGUIRE. I think there will be a tendency to write fewer long-term leases. However, when you do enter into a large lease where a building is built specifically for lease to the Government, the lending institutions will require the developer to have a long-term lease. In other words, the developer will not be able to obtain financing on a 1-year lease.

So there will be some lessening of the effect, but there is a barrier there on some large buildings.

Mr. SHAW. Is that going to be a positive or a negative effect? I can see a situation where the Government might not be as desirable a tenant in some instances, where it might be to our benefit to lease rather than to purchase.

Mr. MAGUIRE. I think you are right. I think there are some cases, like you say. In those terms, I think you should have a short-term lease if the Government may want to move somewhere else, or it is not a good area.

I think we just simply wanted to make sure that all leases got the same consideration compared to construction. But we are not saying there should not be some short-term leases.

Mr. SHAW. I agree with what you are saying, and I agree with the concept as set forth in the bill. I am playing the devil's advocate to establish that I do indeed think that what we are going to find out is that in some instances, we could have gotten a better deal of entering into a long-term lease rather than a series of short-term leases, but I think this is true of any administration. No administration wants to have extraordinary expenses shown in their funding procedure to make the next administration look good who does not have to pick up that funding. That is the problem that we have run into in construction, and that is why we find we are leasing buildings all over town instead of owning them, which would make a lot more sense, which brings me to the next point.

Don't you think perhaps what we should be looking at is actually becoming more like the private sector in our accounting procedures, rather than continuing with this crazy type of financing we have, that is, capitalizing our investments and depreciating them out over the period of useful life, rather than writing them off as an expense, which of course, they are not, when they are in fact an investment.

Would any of you gentlemen care to comment on that?

Mr. MAGUIRE. I think that would involve a capital budget as well as an operating budget, and of course, what we have now is an operating budget where, in effect, all our construction costs are written off. I do not know if I want to comment on whether we should or should not have a capital budget. But I know some municipalities do have capital budgets and operating budgets, and there is some abuse of that, throwing operating expense into the capital budget.

Mr. SHAW. In that you do not want to comment on that, I shall not ask you to do so. However, I may be coming back to you in private, wanting to get your opinions with regard to that, as I think it is something that this Congress or a future Congress should certainly address. We have certainly seen the negative effect of the accounting system we have now, and in that administrations all have to think in terms of 4-year blocks, we have not done the long-term planning in this country that I think is absolutely necessary. I think that the procedures of the Congress, the legislative procedures, in setting up the accounting procedures and the accountability of Government, has contributed fuel to that particular problem.

I have no more questions, Mr. Chairman.

Thank you.

Mr. YOUNG. Thank you, Mr. Shaw.

Mr. Clarke.

Mr. CLARKE. Mr. Mitchell, in your testimony, you suggest on page 10 that "As an alternative to granting the Administrator the authority to waive the 15-percent Economy Act rental limitation, consideration be given to changing the threshold figure from 2,000 to 5,000 or 10,000 square feet." Does that mean that under 5,000 or 10,000 square feet, GSA would have authority to exceed the 15 percent?

Mr. MAGUIRE. That would mean that the 15-percent limitation would not apply to the smaller blocks of space.

Mr. CLARKE. As you know, the committee is greatly concerned over the increased amount of leased space in the GSA inventory. Has the portion of leased space increased significantly during the operation of the Federal Buildings Fund.

Mr. MAGUIRE. The annual lease payments have increased from about $360 million to currently around $880 million. So the annual lease payments have more than doubled. The square footage has increased by about 12 million square feet. I think now it is about 90 or 92 million square feet of leased space. So since the Federal Buildings Fund came into existence, the square footage has increased by about 12 million square feet, and the annual payments have doubled.

Mr. CLARKE. What would 12 million square feet be, percentagewise, approximately?

Mr. MAGUIRE. That would be about 15 percent, or 15 to 20 percent.

Mr. CLARKE. Thank you.

Mr. Mitchell, on page 11 of your testimony, you said that agencies have complained about GSA's delays in providing requested space, and that some agencies have asked the Congress for leasing authority or have requested a delegation of authority from GSA. Could you comment on this?

Mr. MITCHELL. Yes, sir. Some agencies have requested leasing authority, and GSA has been reluctant to authorize or to delegate a lot of the leasing authority. We have in the past encouraged GSA to delegate more leasing authority out in nonurban areas. You have to get the distinction here—we have not encouraged more delegation of leasing authority in someplace like Washington, D.C., but out in the nonurban areas, we have encouraged this, because we think the agency can handle it as well as GSA can.

When you get into the broad leasing authority, though, I would like to draw out some possible advantages and disadvantages if you go the route of delegating broad leasing authority.

One of the disadvantages is the lack of expertise that a number of agencies would have to both solicit, award and administer leases. They would not have the properly-trained staff, or the expert staff, in other words. And if you give broad authority in urban areas, you can wind up having Federal agencies competing with each other for the same space. You can have them competing on rental rates, which could force the rental rate up.

However, there are some advantages to more delegation. I think the agencies would claim, and I think we support them, that they could get space quicker and probably more what they desire to have if they were given more leasing authority. But again, I do not think that we would support in urban areas a broad delegation of leasing authority to the agencies. GSA must stay in control, where a number of agencies would be located in one building; where you would have Government-owned buildings we think that GSA should be in control.

Mr. CLARKE. Thank you.

Thank you, Mr. Chairman.

Mr. YOUNG. Thank you very much, Mr. Clarke.

Mr. Mitchell—and the other members of the panel, if they would like to comment—generally, what steps do you feel should be put in place at GSA which would improve the operation of the Public Buildings Service? Just give us a few—I know that to do a hypothetical thing is kind of rough—but if you were the Administrator, what few changes right now could we start looking at to make this whole thing work a little better? Would you care to comment on that?

Mr. MITCHELL. I can comment a little, Mr. Chairman, but I think it is a rather difficult question.

Mr. YOUNG. Yes, I am not asking you to take Mr. Carmen's place.

Mr. MITCHELL. I do not have nearly the perspective that Mr. Carmen would, so you will have to take that into consideration in anything that I might say—and I do think Mr. Carmen is doing some of the things that I would like to mention already. I think he is into some of the things.

We, being an audit organization, are very concerned that GSA listen to what we have to say in our recommendations, listen to what the Inspector General has to say, and listen and consider what independent studies have to say. And there have been a number of independent studies made of GSA's Public Buildings Service activities.

Mr. YOUNG. So a better review of everything that has been said in the last few years.

Mr. MITCHELL. That is right, I think that would be good—but I think Mr. Carmen is doing some of this, so I want to be sure that I preface it that way.

Mr. YOUNG. We understand.

Mr. MITCHELL. I think when he took office, he definitely took renewed interest in whatever recommendations we had and whatever recommendations his own IG had. So I think that would be the first emphasis, though, is making sure that we consider these things, because there have been a number of studies—some not even reported yet—by the National Academy of Public Administration, by the Grace Commission, and so forth, and I think they should be looked at.

The other area where we have constantly seen problems in GSA is in their management information system. I would try to do something about that. I think almost every time we go into an area and we have looked at things like why do they miss lease options, and it expires, we find that the big problem was that their information system was poor. And I would be very concerned——

Mr. YOUNG. There are something like 3,300 leases, or something up around 4,000.

Mr. MITCHELL. That is right, and you usually find out that the people responsible are keeping sort of cuff records, as well as machine records, to make sure that they try to do jobs properly. But again, I have to emphasize that I think Mr. Carmen is concerned about it, as was Mr. Haase, and I think they are trying to do something about the information systems.

Mr. YOUNG. That is fine.

Mr. MITCHELL. But other than those two areas, as an auditor, that is about all I would like to offer.

Mr. YOUNG. That is fine. We thank you very much for your comments this morning, and we will submit some questions to you as we try to work our way through this serious situation and see if there is some legislative message here.

Mr. MITCHELL. Thank you very much, Mr. Chairman. We would be pleased to answer your questions.

Mr. YOUNG. Thank you very much, Mr. Mitchell.

[Subsequent to the hearing, additional questions were submitted to Mr. James G. Mitchell, Associated Director, General Government Division, U.S. General Accounting Office by Representative E. Clay Shaw, Jr. The questions and responses follow:]

GENERAL ACCOUNTING OFFICE ANSWERS TO QUESTIONS BY MR. E. CLAY SHAW, JR., RANKING MINORITY MEMBER, SUBCOMMITTEE ON PUBLIC BUILDINGS AND GROUNDS

Question. 1. Executive Order 12072, which has now been replaced, required the siting of federal facilities to aid urban economies. In a letter to OMB dated August 21, 1981, you stated that you believed this Order "resulted in some increased federal costs without clear evidence that the local economies substantially benefited". Would you elaborate on this statement for us?

Answer. Between 1979 and 1981, GAO issued several reports on the way in which the General Services Administration had applied the provisions of Executive Order 12072 dated August 26, 1978. GAO's reports showed that GSA had relocated agencies into more costly leased space in central business without fully determining the total cost and without fully assessing the effect on the agencies' operations and how the relocations were benefiting the cities. In some instances these were relocations into more costly space within the central business area; in some instances there was no notice or consultation with city officials; and in some instances, city officials said they believed it would have been more beneficial to the city if the federal agencies had stayed in the same location or had moved into a different area of the city.

Question. 2. What factors do you feel should be considered, or what guidelines should be used, when deciding whether to locate in the central business district of a city?

Answer. GAO believes that when GSA is deciding whether to relocate a federal agency into a central business area of a city, it should consider factors such as the total cost of a proposed relocation, the impact the proposed relocation will have on the operations of the agency that would be relocated, and whether the proposed relocation is consistent with the applicable city's plan for developing and stimulating the area and would therefore benefit the city.

Question. 3. Regarding the full funding concept for leases, not matter what lease threshold is applied, will there still be a trend to shorter term leases?

Answer. If the full funding concept is applied to leases, there may be a trend to shorter term leases to lessen the budgetary impact of the use full funding. However, as regards GSA's leasing, GSA must, in certain cases, enter into long term leases. For example, when a developer constructs a building or lease to the government, the developer would have difficulty obtaining financing on the basis of a short term lease.

Question 4. Tackling the problem of comparing leasing costs with construction costs from another angle, what statutory changes would have to be made to have construction funding spread out and not reported up front?

Answer. The law prohibits an officer or employee of the government from either authorizing an expenditure or obligation in excess of available appropriations or contracting or obligating the government for a payment of money in advance of an appropriation, unless otherwise authorized by law (31 U.S.C. 1341). Once an appropriation is received and a contract entered into for the construction of a building, the full amount of the contract is recorded as an obligation against the appropriation. Consequently, in order to have contruction funding spread out during the construction period, and not reported up front, the Congress would have to authorize the contracting for the construction of buildings in advance of an agency having received an appropriation adequate for the contract's fulfillment. Agencies would have to annually request funds necessary to liquidate the current liability. This is referred to as contract authority. Further, the law requires that contract authority be reported as budget authority in the first year it is granted. Thus the law would have to be amended to exempt this contract authority from reporting as budget authority.

Also, it should be noted that it is budget practice and policy to apply full funding to construction projects. In this connection, OMB Circular A-11, dated July 19, 1983, which contains guidance for the preparation and submission of budget estimates, states that:

"Requests for major procurements and construction programs will provide for full funding of the entire cost."

Question 5. One charge likely to be leveled by critics of time financing is that there will be a rash of uncontrolled public building construction. Do you foresee such a situation and if so, how can it best be controlled?

Answer. We do not know how much public building construction will take place if GSA is granted time financing authority. Under a similar program—purchase contracting—that was in effect for three years, June 1972 until June 1975, GSA constructed 68 projects containing about 15 million square feet of needed space. Regarding the charge that there will be rash of uncontrolled building construction, control over GSA construction projects can be exercised through reviews by congressional committees and OMB and GSA's justifications for new construction starts.

Question 6. As you know, time financing would allow GSA to borrow money from the Treasury which would have to be repaid. What do you feel would be the most appropriate type of repayment, i.e., interest and principal, interest on the bond and payment of the principal when the bond has matured, or some combination of these?

Answer. We have not evaluated the type of repayment schedule that should be used under a time financing arrangement which would allow GSA to borrow money from the Treasury. Under GSA's purchase contract program that was in effect during the period 1972-1975, the repayment schedule is for 30 years. Each periodic payment covers principal, interest, and taxes. Payment of principal generally did not start until after the buildings were constructed and occupied.

Question 7. You have stated that the Federal Building Fund has not met one of its primary objectives of providing sufficient funds for new construction. To what do you attribute this?

Answer. There are several reasons why the Fund has not generated sufficient revenue for new construction. These reasons are discussed in detail in our December 11, 1981, report (PLRD-82-11) and are summarized as follows:

The Fund expenditure for leased space has increased dramatically and leased buildings generally generate a minimal cash surplus for the Fund.

Administrative and legislative actions reduced Fund income by about $600 million in 3 years, 1975 through 1977.

Older government-owned buildings in GSA's inventory require extensive alterations and major repairs which, along with operating costs, exceed rent income for some of these buildings.

GSA has in its inventory a sizable amount of vacant space (currently about 16 million square feet) that does not generate revenue for the Fund.

Rents collected for 68 buildings, whose construction was financed through purchase contracting, are not sufficient to cover operating costs and principal, interest, and taxes.

Question 8. SLUC is one method of holding agencies accountable for the space which they occupy and is valuable from the standpoint of performance budgeting. Do you agree with the procedure used to determine the SLUC rate, or do you think it might be more appropriate to simply charge the agencies for the cost of providing the space and look for other sources of revenues for funds for new construction?

Answer. We believe that the procedure GSA uses to determine the SLUC rates is in compliance with Public Law 92-313. According to this law, the charges assessed to the agencies for GSA controlled space should approximate commercial charges for comparable space and services. Public Law 92-313, however, does not contain any criteria or guidance for computing comparable commericial rates. GSA currently uses independent appraisals to develop SLUC rates for each building.

While we recognize that appraisals are estimates of value based in part on judgments and opinions of independent appraisers, appraisals do provide a reasonable basis for establishing comparable commercial rates as required by the law. However, agencies complain that GSA charges are high and exceed the cost of providing space.

A change to Public Law 92-313 would be required for GSA to use a method other than the comparable commercial rate of charging agencies rent for space. If the law were changed, GSA could charge agencies for the actual cost of providing the space and obtain funds from direct appropriations for construction, building alterations, and purchase contract financing.

GSA could charge agencies for the cost of operating government-owned buildings (cleaning, utilities, maintenance and other costs) and the cost of leased space (rent paid to private developers plus other operating costs not included in lease costs). The effect of charging the actual cost of providing space instead of the comparable commercial rate would be to reduce the overall charges to agencies for space and services. We believe that agencies would welcome a reduction in their space charges. However, agencies that occupy leased space may complain about the unequal treatment since charges assessed them would be higher than space charges assessed for those agencies housed in government-owned space.

Question. 9. You have stated that you support the practice of obtaining leased space by competitive bid, but could you define for us the circumstances under which space should be obtained by negotiation?

Answer. We believe that it is appropriate for GSA to acquire leased space by negotiation, but GSA should publicly solicit competitive offers for such space. Offering all those qualified an opportunity to compete helps to minimize favoritism and provides greater assurance that acceptable space is obtained at a reasonable rental. Acquiring leased space by the advertised sealed bid approach, rather than by negotiation, may be difficult because true competition—in the sense bidders are offering the same or substantially the same property—is difficult since no two buildings are exactly alike.

Question. 10. This question might be better asked of GSA, but in your review of GSA's leasing activities how often was it necessary to waive the Economy Act for the acquisition of leased space in excess of 10,000 square feet?

Answer. We have no information on the number of cases where GSA could not enter into a lease of space over 10,000 square feet because the 15-percent rental limitation imposed by the Economy Act would be exceeded. We are aware that compliance with the 15-percent rental limitation has been a problem for GSA in the past when it attempted to lease Social Security district offices, which average about 5,000 square feet.

Question. 11. You have commented that agencies have complained about the length of time it takes for GSA to fill space requests. Could you tell us what the cause of the delays are?

Answer. In May 1982 we reported (PLRD-82-46), that there are many reasons for delays in acquiring space, but a contributing factor, in most cases, is that GSA cannot obtain adequate funding for federal construction and must rely on leasing to meet agencies space needs. Delays in acquiring leased space are due in part to:

GSA's administrative review and oversight procedures as well as socio-economic and life-safety requirements which have prolonged and complicated the leasing process.

GSA's leasing resources (staff) have not increased at a pace commensurate with the increased use and complexity of leasing.

Tight market conditions (since eased) in several of the Nation's cities made suitable space difficult to find or unavailable.

Question. 12. Do you think giving the GSA Administrator the authority to exchange property and then requiring the exchange to be approved by Congress is a workable procedure, given the sensitivity of a negotiated exchange and the time necessary for Congressional action?

Answer. We believe that giving the Administrator of General Services the authority to exchange property and requiring congressional approval, or advance reporting, of proposed exchanges involving property valued over a stipulated amount is a workable procedure.

We reported in 1974 that the exchange method has two inherent weaknesses:

It lacks competition in determining the value obtainable for excess properties.

It requires too much time in locating a suitable building site (or building) and in negotiating an exchange.

The holding period for six exchanged properties we reviewed ranged from 3 to 10 years. In some cases former government property was sold shortly after an exchange, at prices higher than the appraised value at which it had been exchanged.

When public buildings are acquired by the exchange method without the use of over $500,000 in appropriated funds, GSA does not have to go through the authorization and appropriation processes. However, it is required to go through both processes when acquiring public buildings with appropriated funds. The Congress historically has treated the construction of public buildings under specific legislation which has included detailed procedures for authorizing and allocating public building projects. In addition, GSA is required to justify the need for a project when requesting appropriated funds.

We have suggested that any exchange involving the acquisition of a public building valued at over $500,000 should be subject to either approval by, or advance reporting to, the Congress. If this requirement were applied to exchanges, it would enable the Congress to consider the need for, and insure the equitable distribution of, public buildings throughout the United States. Although advanced reporting or approval of an exchange may take time, we believe there has to be disclosure to ensure that GSA is acquiring needed public buildings.

Question 13. In your opinion, is OMB Circular No. A-104 an effective tool for comparing long term leasing costs with new construction or is is better for verifying what someone wants in the first place?

Answer. In our opinion, OMB Circular No. A-104 is not an effective tool for comparing long term leasing costs with new construction. We have previously testified and reported that Circular A-104 is outdated and contains biases in favor of the leasing alternative. These biases include use of an inappropriate discount rate, not discounting future construction costs to correspond more closely with the timing of cash outlays, and omitting future alteration costs from the leasing alternative. Also, it is difficult to compare the cost of leasing to the cost of federal construction because of the differences between a leased and a federally constructed building. Generally, a federal building is of better quality and this factor is not recognized in an A-104 cost comparison.

We have also reported and testified in the past that the primary reason for GSA leasing buildings for long term needs has been that only limited funds have been available for construction. The decision to lease has been based on budgetary considerations and not on the most economical alternative determined by a comparative analysis.

Mr. Young. Our next witness will be Mr. Earl A. Armbrust, Deputy Assistant Director for General Government, Congressional Budget Office.

Mr. Armbrust, the full text of your prepared statement will appear in the record at this point.

[Statement referred to follows:]

Statement of Earl A. Armbrust, Deputy Assistant Director for General Government, Congressional Budget Office

Mr. Chairman, I am pleased to participate in this hearing on H.R. 630 and to summarize findings of a recent Congressional Budget Office (CBO) report titled, "The Federal Buildings Program: Authorization and Budgetary Alternatives." The study, requested last year by the chairmen and ranking minority members of the Senate Committees on the Budget and on Environment and Public Works, focuses on Congressional concern for strengthening program review and cost disclosure, reducing long-term federal costs, and assuring an appropriate level of federal construction and ownership of work space. My statement will highlight two major topics addressed by the CBO report and H.R. 630:

Strengthening public buildings authorization and budgeting; and

Choosing whether to acquire space by leasing or by federal construction.

AUTHORIZATION AND BUDGETING

As in many other federal programs, funding for space needs undergoes a two-part Congressional approval process—authorization and appropriation. Critics, the General Accounting Office among them, have charged that the system could be strengthened, and cite problems with both steps in the approval process.

Planning and authorization deficiencies.—Under the current system—which does not require an annual authorization—authorizing committees review perhaps 100 or so prospectuses each year. Prospectuses do not all come in at one time and do not provide information on how relative project priorities may be evaluated. Coupled with long-run planning deficiencies, it is most difficult to weigh the relative merits of each proposal and to coordinate the authorization and appropriations processes.

Long-range planning at the General Services Administration is still in a formative stage. Although advances have been made in recent years, the planning documents do not readily permit consideration of the Federal Buildings Fund (FBF) program with the spending targets set by the budget process or of acquisition alternatives that would offer different programmatic and budgetary impacts in either the short or long run. The information currently provided also fails to facilitate review of consequences that would result from changing key planning assumptions—such as those covering federal employment levels and space utilization.

Overall, the annual planning and authorization requirements of H.R. 630 would seem to improve the basis for Congressional decisionmaking and to facilitate closer integration of the authorization and budgetary processes. I will defer to representatives of the GSA concerning any administrative problems that might be encountered in complying with the numerous reporting requirements in the bill. In addition, some of these requirements go beyond notification, dealing with Congressional committee approval and disapproval of actions by the executive branch. This is an area not covered in the CBO report, and I understand the committee will be carefully scrutinizing the bill's language in view of the recent Supreme Court decision on legislative veto provisions *(Immigration and Naturalization Service* v. *Chadha et al).*

Appropriation and cost measure problems.—The cost measures currently used in the FBF budget accounts give rise to difficulties in assessing long-term cost commitments, and most importantly, in comparing requirements for public buildings against other federal responsibilities. Two aspects of the current budget framework prove especially troublesome—the disclosure of costs for new multiyear lease contracts, and the absence of budget authority and gross outlays in the FBF account.

With regard to multiyear leases, the cost of full long-term commitments are difficult to assess because the appropriation language limitations and associated budget measures used for the FBF account only show the costs being paid in a given year—not the remaining out-year costs of multiyear contracts. The CBO report notes that a similar problem arose in 1975 over the budgetary treatment of multiyear contracts entered into by the Department of Housing and Urban Development (HUD) with local public housing authorities. In that case, Congress decided to fund the full known cost of multiyear contracts in the year contracts were awarded. The provisions of H.R. 630 would enact a somewhat similar accounting change for the FBF program as a way of providing more realistic assessment of out-year leasing costs. In limiting the change to new leases with terms of more than five years, the increase in obligational or budget authority would probably be about $300 million per year. As in the HUD case, this accounting change would not directly affect program levels or budget outlays.

With regard to budget authority and outlays, problems arise concerning the disclosure of overall program costs. Federai buildings program activities are financed by standard level user charges (SLUCs)—that is, rent-like fees collected from tenant agencies. These collections are deposited into the Federal Buildings Fund from which funds are committed to program activities subject to limitations set forth in language enacted in the annual appropriation bills. These limitations serve a purpose similar to the enactment of appropriations, but they do not create budget authority or gross outlays in the FBF account.

The absence of budget authority and the netting of funds into and out of the FBF account in outlay amounts so small that they usually receive little notice as a significant cost item throughout the Congressional budget process. In 1982 for example, the FBF account shows negative outlays of $92 million—meaning only that SLUC and the other collections exceeded gross disbursements by this amount. This treatment helps to insulate space acquisitions decisions from pressures to curb short-term federal spending, but in doing so it masks the full cash demand of the program on the U.S. Treasury. The 1982 cash disbursements—outlays—were reported as a minus entry but gross disbursements for various FBF costs were actually just under $2 billion.

For certain major activities such as construction, repairs, and leasing, H.R. 630 seems to call for enactment of appropriations and associated budget authority—apparently in lieu of relying on language limitations in annual appropriation acts. If this interpretation is correct, the bill would improve the disclosures of FBF costs and permit them to be weighed against those of other programs reviewed in the budget process. The Committee may want to consider clarifying the language of the bill on this point and to bring all FBF activities under the requirements for enactment of budget authority. If so clarified, H.R. 630 could maintain the current SLUC mechanism that charges agencies for rent and, at the same time, improve budget accountability.

LEASING VERSUS CONSTRUCTION

A major part of the CBO study address whether the present system biases federal office space acquisition decisions toward leasing rather than federal construction and ownership; and if so, whether the government passes up the opportunity to capture long-term ecomomies. In short and at the risk of oversimplifying, our analysis confirmed that despite the opportunity to achieve significant long-term economies through construction, the decisionmaking framework shows a bias toward leasing in the acquisition of office space. I would like first to elaborate on both points—the potential economies and the systematic biases, and then discuss how H.R. 630 deals with each.

The economies of Federal ownership

CBO analysis of comparative cost data suplied by GSA on 126 projects confirms that, in many cases, construction of larger projects offers long-term savings relative to leasing when comparing both the cash disbursement effects on the FBF budget and present values that adjust for the fact that costs for the two methods of acquisition occur over different periods of time.

FBF cash disbursements.—In the short term, construction and ownership are almost always more costly than leasing because they require large initial disbursements. In addition, construction costs are higher to the federal government than to private-sector developers. According to a 1976 study for GSA, various statutes and regulations that govern federal projects may increase net costs per square foot by as much as two-thirds.

From a long-term perspective, however, conditions in widely varying local real estate markets can set rents high enough so that the accumulation of payments the government would make for leased space may eventually exceed the high costs of federal construction. The CBO analysis showed, for example, that over 34 years, leasing commercial space of 100,000 square feet or more could typically result in cumulative GSA disbursements exceeding those of construction by about 40 percent. The outlay comparisons were based on 1980 prices and thus did not consider the impacts of future inflation. If all recurring annual costs for repairs, operations, and rents increased at an annual 5 percent rate relative to the fixed costs of construction, GSA would disburse 93 percent more funds under leasing after 34 years than it would if it had constructed similar space. Such differences in FBF disbursements may largely occur because rents for commercial office space are often set to recoup costs within 15 years or less—even though buildings generally have a longer useful life.

Present values.—Though useful in some respects, the FBF budgetary comparisons I have just described disregard certain key factors—specifically, that expenditures for leasing and construction occur over different periods of time, that an owned building has some residual value after its useful life, and that federal properties are usually exempt from local real estate taxes. When making present-value comparisons that take these factors into account, CBO again found that, compared to leasing, construction offers significant opportunities for savings—provided the real cost of borrowing (expressed as the discount rate) stays below 5 percent. This conclusion is supported by a 1981 study undertaken by GSA and by a detailed CBO analysis of the data base used in that report. Four qualifications should be made concerning our findings:

First and most important, the results are highly sensitive to the particular discount rate used in the present-value cost comparisons of leasing and construction. Inserted for the record is a table showing, at six different real discount rates, the percentage of choices supporting construction over leasing and the associated savings. The table shows, for example, that at the highest discount rate shown, 7 percent as prescribed by the Office of Management and Budget in 1972, only one-third of the comparisons favor construction over leasing, with average savings of 9 percent; but with a discount rate of 3 percent—the basis for which I will discuss later—almost two-thirds of the comparisons favor construction, with savings averaging 30 percent.

INCIDENCE AND DEGREE OF PRESENT-VALUE SAVINGS FROM CONSTRUCTING RATHER THAN LEASING UNDER 6 DISCOUNT RATES

[In percents]

Real discount rate (percent)	Comparisons supporting construction [1]	Average savings (relative to leasing) in which construction is less expensive	Average cost increase in which construction is more expensive
2	83	31	49
3	64	30	39
4	58	24	51
5	45	20	56
6	36	16	62
7	34	9	77

[1] Results weighted to reflect amounts of leased space in areas where projects were compared.

Source: Congressional Budget Office.

As a second qualification, the CBO analysis showed that results are highly sensitive to both project size and weighting for the amount of GSA-leased space in project localities. Such weighting recognizes the varying opportunities available in different localities to change the mix of leased and government-owned space. With regard to building size, the analysis showed that the construction option for relatively small projects—those under 100,000 net square feet of office space—does not yield savings. Because of differences both in opportunities and in project size, it is appropriate that H.R. 630—in contrast to previous proposals—would not require that the mix between leased and government space be based on a predetermined percentage of total inventory.

Third, the CBO cost analysis focused mainly on construction and leasing. Recent news reports on purchases of existing commercial buildings draw attention to another alternative that could reduce federal space acquisition costs. In this regard, the committee might want to insure that GSA has adequate authority to fully pursue the purchase of commercial facilities, including those it leases.

Finally, other factors—such as the opportunity to control building design through federal construction, or the space management flexibility afforded by leasing—may play as important a role in space acquisition decisions as economic factors do. The need for maintaining short-term flexibility may be especially important at this time in view of GSA planning assumptions that anticipate reductions in federal employment levels and in the amount of space used per worker.

Pro-leasing biases

Even though federal ownership often offers attractive long-term economies, the CBO review supports a common complaint that the current system biases office space acquisition decisions in favor of leasing. The biases derive both from the prescribed discount rate in cost-comparison guidelines and from certain structural and fiscal constraints. After summarizing the nature of these biases, I would like to conclude my testimony by commenting on how H.R. 630 addresses them—recognizing that important short-run budgetary considerations always have a strong and sometimes necessarily overriding, influence on long-term capital investment decisions.

Cost-comparison biases.—Before space acquisition requests are submitted to the Congress, the Office of Management and Budget (OMB) requires GSA to prepare a present-value comparison of alternative methods for obtaining space. Present-value analysis permits comparison of the cost advantages and disadvantages associated with different methods of acquisition, adjusting fully for the different timing of expenditures. To make a fair comparison, costs should be reduced to a common time frame. This is important because the earning power of money changes over time: a dollar available today is worth more to the government than one available tomorrow; and conversely, waiting to spend a dollar later provides an opportunity to put it to other uses. Present-value comparisons achieve a common pricing basis through use of a real interest rate, or rate of return, that places costs or values at the same point in time.

Issued in 1972, OMB guidelines prescribe a rate of 7 percent, based on an estimated rate of return on general-purpose real property leased from the private sector. According to GAO, a rate based on long-term Treasury borrowing costs represents a more appropriate measure, because a discount rate should reflect the value of federal, not private-sector, resources. This approach assumes that the government acts like a private investor to maximize its internal financial position rather than trying to effect an efficient allocation of resources in the economy as a whole.

Under the GAO approach, however, an incongruity emerges. Because rental rates under a lease include investors' borrowing costs, using generally lower federal borrowing rates to discount would overstate leasing costs. Treasury borrowing rates are lower than private rates of equal maturities, because private-sector investments are subject to a risk of financial failure. Adding a risk charge to federal borrowing rates would help correct the incongruity noted in the GAO approach. The CBO analysis of historical data over the past two decades (1963–1982) shows that adding an average risk factor to real federal borrowing rates suggests a discount rate of 3 percent. This alternative rate, which reflects borrowing costs rather than rates of return, is considerably lower than the present OMB rate.

Some analysts might favor a lower discount rate based solely on Treasury borrowing without adding a factor for risk, while others might favor higher rates based on estimated returns to society through private-sector investments. In any event, choosing a discount rate involves some degree of uncertainty and a different rate may become appropriate as borrowing experience changes over time. In view of this uncertainty, H.R. 630 appropriately does not set a particular rate in law. This might be a good time, however, for the Administration to review the current rate, which was set nearly a decade ago. Perhaps the legislative history of the bill under consideration could cover this point.

Biases from structural and fiscal constraints.—The CBO report also describes proleasing budgetary biases under current practice that result both from the structure of the FBF account and from the pressures of fiscal considerations.

The structure of the FBF account biases decisions toward leasing primarily for two reasons. First, unlike budgetary accounting practices for construction, total long-term costs under lease contracts are not recorded in the year such contracts are awarded. In the short run, therefore, leasing presents the more attractive alternative; costs are spread out, imposing smaller immediate demands on fund resources. Second, because program levels are limited by standard-level user charge (SLUC) collections, it is difficult to increase the level of capital investment and thus change the mix of owned and leased space. In fact, the resources available since the creation of the FBF could not have covered the higher level of commitments that would have been required to accommodate less leasing.

Several provisions in H.R. 630 would help correct both types of structural bias. First, the bill would require budgeting for the full-year cost of leasing with terms of more than five years. Second, the bill authorizes the appropriation of additional capital to the fund as a supplement to SLUC resources. Two other provisions—changes in the basis for setting SLUC assessments and authority to borrow from the Treasury—would also provide additional sources of funding through internal budgetary accounting. But they seem to complicate unnecessarily the already highly complex and often confusing funding arrangements for FBF. In the interest of keeping the budget from getting more complex, the Committee might want to consider deleting these provisions. If this were done, the structural bias could still be addressed by relying on the more straightforward route of direct appropriations to supplement SLUC funds when necessary.

Regardless of what structural changes are made in the budgetary treatment of the FBF program, decisions in favor of leasing may result from a desire to minimize short-run government spending. Leasing always results in substantially lower near-term outlays compared to construction. The balancing of immediate budgetary and economic requirements against those of the longer term is a task that the Executive and the Congress share and that will almost always influence decisions about federal buildings just as it does those about other federal programs. Hopefully, the requirements for long-range planning and closer coordination of the authorization and planning processes set forth in H.R. 630 will lead to more informed decisions concerning such tradeoffs.

In conclusion, Mr. Chairman, I believe that the legislation now under consideration would help correct many of the problems set out in the CBO report on the federal buildings program. I hope the Committee will find the report and my observations useful in completing their action on this legislation. I would be pleased to answer any questions the Committee may have.

Mr. YOUNG. Please proceed.

TESTIMONY OF EARL A. ARMBRUST, DEPUTY ASSISTANT DIRECTOR FOR GENERAL GOVERNMENT, CONGRESSIONAL BUDGET OFFICE

Mr. ARMBRUST. Thank you, Mr. Chairman.

I am pleased to participate in this morning's hearing on H.R. 630 and to summarize my statement which has been submitted for the record and presents the findings of a recent report by the Congressional Budget Office on the authorization and budgetary aspects of the Federal buildings program.

The CBO study focused on congressional concern for strengthening program review and cost disclosure, reducing long-term Federal costs, and assuring an appropriate level of Federal construction and ownership of workspace.

I would like to highlight two major topics addressed by the CBO report and covered in H.R. 630: the strengthening of the public buildings authorization and budgeting, and choosing whether to acquire space by leasing or by Federal construction.

With regard to authorization and budgeting, the public buildings program is similar to many other Federal programs that undergo a two-part process, as you know, of both authorization and appropriation. The committee has much information on deficiencies in the current planning and authorization program, and I also recognize the many improvements in the information reporting area made in the last several years, although I think good planning is at the heart of the committee's concern, but further improvements are needed to accomplish many of the reporting-type objectives that are in the bill.

I would defer to others concerning administrative problems that might arise in terms of complying with the reporting provisions of tbe bill, and any language problems in the bill related to the legislative veto in view of the recent Supreme Court ruling.

This morning, I would like to focus on appropriation and cost-measure problems. The cost measures currently used in the Federal building fund account give rise to difficulties in assessing long-term cost commitments, and most importantly, in comparing requirements of the public buildings program to responsibilities carried out by other Federal agencies and their programs.

Two aspects of the current budget framework prove especially troublesome. One is the disclosure of costs for new multiyear leases, and the other is the absence of budget authority and gross outlays in the Federal building fund [FBF] account.

With regard to multiyear leases, the cost of full long-term commitments are difficult to assess because the appropriation language limitations and the associated budget measures for the FBF account only show the costs being paid in a given year, not the remaining outyear costs of the multiyear contracts. The CBO report notes that a similar problem arose in 1975, just after the new budget process was established, concerning the treatment of multiyear contracts of the Department of Housing and Urban Development with local public housing authorities. In that case, the Congress decided to fund the full known cost of multiyear contracts in the year that the contracts were awarded. The provisions of H.R. 630 would enact a somewhat similar accounting change for the Federal building fund program as a way of providing more realistic assessment and disclosure of outyear leasing costs. In limiting this change to new leases with terms of more than 5 years, the increase in obligational or budget authority coupled with other provisions in the bill would probably be about $300 million per year. As in the HUD case, this accounting change would not directly affect program levels or budget outlays.

I would like to talk about another aspect of these budget-type problems.

With regard to budget authority and outlays, problems arise concerning the disclosure of overall program costs of the public buildings program. Under the current system, limitations set forth in annual appropriation acts serve a purpose similar to the enactment of appropriations insofar as detailed program review is concerned, but they do not create budget authority or gross outlays in the FBF account. I would point out that these provisions were created just prior to the establishment of the congressional budget process, and now there is much more interest and attention in tracking all of the programs throughout the appropriation and authorization process, and in the various budget resolutions.

In the absence of the budget authority, and with the netting of funds into and out of the Federal building fund account, the outlays result in amounts so small that they usually receive little attention as a significant cost item in the budget process. In 1982, for example, the FBF account showed negative outlays of $92 million, meaning only that the user charges and other collections exceeded gross disbursements by this amount. By contrast, the gross disbursements for the entire Federal building program were just under $2 billion.

For certain major activities such as construction, repairs, and leasing, H.R. 630 seems to call for enactment of appropriation and associated budget authority in lieu of relying on language limitations in annual appropriation acts. If this *interpretation is correct*, the bill would improve the disclosure of FBF costs and permit them to be weighed against those of other programs reviewed in the budget process. The committee might want to consider clarifying the language in the bill on this point and bringing all FBF activities under the requirement for enactment of budget authority.

Now, I would like to turn to the leasing versus construction area. A major part of our study addressed whether the present system biases Federal office acquisition decisions toward leasing rather than Federal construction and ownership, and if so, whether the Government passes up the opportunity to capture long-term economies. In short, and at the risk of oversimplifying, our analysis confirmed that despite the opportunity to achieve long-term economies through construction, the decisionmaking framework does show a bias toward leasing in the acquisition of office space. The opportunity for long-term savings shows up both when we compare disbursement effects in the FBF account itself and when we compare present values that adjust costs under the two different methods of acquisition occurring at different points in time.

Though useful in some respects, the comparison of FBF disbursements disregards certain key factors—specifically, expenditures for leasing and construction do occur over different points in time and do incur Treasury borrowing costs that show up outside of the FBF account, an owned building does have residual value after its useful life, and Federal properties are usually exempt from local real estate taxes.

So we made present value comparisons that took these factors into account and found that construction as against leasing offers significant opportunities for savings, provided that the real cost of borrowing, expressed as the discount rate in the present value analysis, stays below 5 percent. In our prepared statement, we have a table that shows the comparisons using different discount rates ranging from 7 to 3 percent.

Several important qualifications, however, should be made with regard to these comparisons. The first is the sensitivity of the results to the discount rates used. At 7 percent, as currently prescribed by OMB, only a third of the comparisons favor construction over leasing, with average savings of 9 percent, but with a discount rate of 3 percent—and I will describe the basis for that later—almost two-thirds of the comparisons favor construction, with savings averaging about 30 percent.

The second qualification is that the results are highly sensitive to both project size and the weighting for the amount of GSA leased space in a particular locality. Because of such sensitivity to both size and local opportunities, I think it is appropriate that the bill does not specify a predetermined or fixed percentage for the mix between leased and owned space.

Third, the CBO analysis focused on construction and leasing. Recent news reports have drawn attention to the GSA purchase of existing commercial buildings, and I think that offers another alternative that ought to be pursued. The committee might want to be certain that GSA has authority to pursue that, with regard both to existing commercial buildings that might be on the market and to those that it already leases.

Finally, I would like to point out that other factors, such as the opportunity to control building design through Federal construction, and the space management flexibility that attaches to leasing, may play as important a role in space acquisition decisions as the economic considerations do.

What about the leasing bias? Even though construction offers advantages in the long term, the CBO review supports a common complaint that the current system biases office space acquisition decisions in favor of leasing. The bias derives from the prescribed discount rate for cost comparison guidelines and from certain structural and fiscal constraints.

With regard to cost comparison guidelines, the OMB issued the regulation specifying the 7-percent rate back in 1972. It was based on an estimated rate of return on general-purpose real property leased from the private sector. According to GAO, a rate based on long-term Treasury borrowing costs represents a more appropriate measure, because the Government's discount rate should reflect the value of Federal not private sector resources.

The CBO report presents an alternate rate because Treasury borrowing rates are always lower than private rates of equal maturity, and because private-sector investments are subject to the risk of financial failure. We felt that this particular bias ought not to be one that would influence the comparisons.

So we did an analysis over the past two decades, 1963 through 1982, and by adding a factor for the private-sector risk, we came up with a real Federal borrowing rate, that is, one that adjusts for both current and expected inflation of 3 percent. Now, some analysts might favor a lower discount rate based solely on Treasury borrowing without a risk factor, while others might favor a higher rate based on estimated returns to different parts of the private sector. In any event, I want to stress that choosing a discount rate involves considerable uncertainty, and a different borrowing rate may change as experience changes over time. In view of this uncertainty, H.R. 630 appropriately does not specify a particular discount rate in the law. This might be a good time, however, for the legislative history to suggest that the administration review the current rate, which was set nearly a decade ago.

There are other types of biases, relating mainly to the structural aspects of the FBF account and to certain fiscal constraints. These were noted in the CBO report as favoring leasing under current practice, resulting from the structural and the fiscal biases.

First, unlike budgetary account practices for construction, the long-term costs of leasing are not recorded in the year that the contracts are awarded. In the short run, therefore, leasing always shows up as the attractive alternative. Costs are spread out, imposing smaller, immediate demands on the Federal building fund resources.

Second, because program levels are limited by standard level user charges, it is difficult to increase the level of capital investment and thus change the mix of owned and leased space. GAO noted that this had been one of the problems with the Federal building program before the new Fund was created, but I would like to point out that even with the Federal building fund and the limitation of only being able to commit the availability of these *user charges, the fund could not accommodate much of a higher* level of construction.

Several provisions of H.R. 630 would help to correct both these types of structural biases. First, the bill would require budgeting for the full-year cost of leases with terms of more than 5 years, and second, the bill would authorize the appropriation of additional capital to the fund as a supplement to the SLUC resources.

Two other provisions would also address the structural bias—changes in the setting of the SLUC assessments, and authority to borrow from the Treasury. I believe, however, that these two provisions seem to further complicate an already confusing funding arrangement for the Federal building fund, and the committee might want to consider deleting them. If they were deleted, the structural bias could still be addressed by relying on the more straightforward route of direct appropriations to supplement the SLUC funds when necessary.

Regardless of structural changes in the budget treatment of the Federal building fund itself, decisions in favor of leasing may result from a desire to minimize short-run Government spending. As was noted earlier, this is somewhat of an inherent problem that the Government currently faces with regard to short- and near-term types of decisions. Balancing the immediate budgetary and economic requirements against those of the longer term is a tax that both the executive branch and the Congress share and that one will always influence decisions about Federal buildings, just as it does about other programs. Hopefully, the requirements for long-range planning and closer coordination between the authorization and the appropriation processes will lead to more informed decisions concerning such trade-offs.

In conclusion, Mr. Chairman, I believe that the legislation under consideration will help correct many of the types of problems that were set out in the CBO report. I hope the committee will find the report and my observations useful in completing their action on this important legislation.

I would be pleased to answer any questions now, or that the committee may wish to submit to us later.

Mr. YOUNG. That is fine, Mr. Armbrust.

Mr. Armbrust, you pointed out that the present value comparison of lease versus construction are highly sensitive to the particular discount rate used in the analysis. The alternate 3-percent rate presented in the CBO report was based on the historical review of real Treasury borrowing costs over the past 20 years. How does this historical rate, the 3-percent average, compare with the CBO near-term budget projections?

Mr. ARMBRUST. First, I want to clarify that the historical analysis that we did for the past two decades came up with the Treasury borrowing rate adjusted to include the risk factor. Essentially, there were two steps involved. One, we came up with what we called an inflation-free rate, which was essentially based on the Treasury 3-month bill and adjusted by what we call the GNP deflator, because we would expect, with such a short-term investment, that there would not be expected inflation. That would be limited essentially to what was known as the inflation at that time. Then to that, we applied a risk factor. That was obtained over the same historical period by comparing the nominal borrowing rates for 20-year Treasury borrowing to the 20-year loan commitments for commercial office space, and we felt that was a good way to see what the added cost was in the private sector for such risk. And that, as a graph in our report shows, averaged about 1.8 percent. So, taken together, both the inflation-free rate and the added risk factor, we came up with the 3-percent average.

Now, I believe if we were to do that to come up with the Treasury borrowing rates and adjust for risk relating to CBO's near-term projections, or at least those that were in effect last summer when we did the report, we would come out with 4.5 percent for a fiscal year 1984 rate and 3.9 percent in 1988. I think this shows partly a working off of high rates that are in effect in the 1982–83 period.

The implications of these near-term projections on historical averages are most uncertain, but I would like to point out that during the 20 years that we did analyze—the real borrowing rate, adjusted to include the risk factor, exceeded 5 percent in only 1 year; in 1982, it was 5.66. So I think the averages do not reflect any undue masking during that period of time, because there was only one point, even in the historical period, where it was above the 5 percent.

Mr. YOUNG. The OMB Circular A–104 process takes into account the revenue losses to the Treasury in terms of building owners depreciating their property and other tax advantages that they can avail themselves of. Does that take into account——

Mr. ARMBRUST. Yes. Our analysis included the real estate tax difference. We did not address the small aspect of profit in there. The GSA analysis, which we looked very closely at, indicated that a lot of these factors have a relatively minor influence, that the discount rate is really the dominant thing that ends up affecting the comparisons.

Mr. YOUNG. Thank you very much.

Mr. Shaw.

Mr. SHAW. Thank you, Mr. Chairman.

Mr. Armbrust, in your analysis, did you take into consideration the impact of the Federal income tax system, that is, as far as the revenue received from the Federal Government, or the tax shelter aspects coming out of the depreciation to the individual taxpayer who is leasing space to the Federal Government?

Mr. ARMBRUST. No; we did not. Our comparisons were before taxes, and I can appreciate that there are tax expenditure aspects under which the Government loses revenue because of depreciation in the private sector. We did not do that type of analysis, mainly because we did not have the capacity to come up with meaningful information about the tax position of investors in commercial office space and so forth. But I think the point is that there is a cost to the Treasury through what we call in the budget parlance a tax expenditure, relating to depreciation.

Mr. SHAW. There is a cost and, of course, a revenue factor, also.

Mr. ARMBRUST. Yes; we call it a "tax expenditure." It is kind of a euphemism for the loss——

Mr. SHAW. To look at a lot of these buildings we have been leasing around here for so many years, I do not think there is much left to depreciate.

Mr. **Armbrust**. Well, again, I am not knowledgeable enough about the change in ownership of leased buildings to be able to estimate that. I know many of them are older.

Mr. **Shaw**. Yes. You have certainly answered my question.

Mr. **Levitas**. Would the gentleman yield at that point?

Mr. **Shaw**. I would be happy to yield.

Mr. **Levitas**. That is a very interesting point. If the tax expenditures, as you call them, were taken into account, would that skew the decision more favorably as far as the taxpayers are concerned to Federal ownership?

Mr. **Armbrust**. Well, there is certainly a cost when space is leased, if the entrepreneur is able to take advantage of the depreciation rule and therefore, money is——

Mr. **Levitas**. Right. Now, the other question, by way of follow-up—in other words, it is an additional cost to the Government?

Mr. **Armbrust**. It seems to be; yes.

Mr. **Levitas**. All right. Now, the other thing that you made reference to—if a building which has been fully depreciated is sold and purchased by a new owner, can the new owner start over and begin to depreciate it over again?

Mr. **Armbrust**. My understanding is that this is a common practice in the real estate market.

Mr. **Levitas**. Thank you. That is what I wanted to clarify.

Mr. **Shaw**. Yes; if I may reclaim my time, as a CPA, I can answer that, too, and comment further that the selling party would take long-term capital gains, which are the favored tax treatment, on the recoup of his depreciation that he has taken off his ordinary income, and then, as the gentleman from Georgia was getting to, it would certainly then start the depreciation situation all over again for the direct reduction from ordinary income. So as is too often the case, the Federal Government is paying twice, and I think that is probably the case.

I yield back the balance of my time, Mr. Chairman.

Mr. **Young**. Thank you, Mr. Shaw.

Mr. Clarke.

Mr. **Clarke**. Thank you, Mr. Chairman.

Mr. Armbrust, on page 5 of your statement, you state that:

> For certain major activities such as construction, repairs, and leasing, H.R. 630 seems to call for enactment of appropriations and associated budget authority—apparently in lieu of relying on language limitations in annual appropriation acts. If this interpretation is correct, the bill would improve the disclosure of FBF costs and permit them to be weighed against those of other programs reviewed in the budget process. The Committee may want to consider clarifying the language of the bill on this point.

Would you be willing to give the committee your suggestions in that regard?

Mr. **Armbrust**. I think we could. There are two ways, really, to create budget authority for the Federal building program, and if it were created, that would provide a tag, along with gross outlays, to be tracked through the budget process. It could be done by simply abolishing the building fund, somewhat as the Senate-reported bill does, and reverting back to one or several major appropriations; or it could be done, as it seems to be in this bill, by retaining the SLUC user charge system, but requiring budget authority and gross outlays in this fund. Then there would be an offset elsewhere in the budget to avoid the double counting much as we do for civil service retirement, where the agencies make contributions, and the cost shows up both in the agency accounts, so they carry a part of the cost, and in the account from which retirement is paid. In this case, budget authority would represent the action that would make the user charge collections available for use. We would be happy to work with the staff on specific language.

I am not sure I have answered your question, but it is somewhat technical. The question is whether or not you want to create a budget authority as distinct from just relying on the nonbudget authority limitations in the appropriation bill. We believe that the former would facilitate the review of the Federal building program throughout the process, whether it was done by abolishing the SLUC mechanism or keeping it intact.

Mr. CLARKE. Thank you.

Then, on page 10, you say that: The Committee may want to ensure that GSA has adequate authority to fully pursue the purchase of commercial facilities, including those it leases.

Is it your thought that this should also be included in the bill?

Mr. ARMBRUST. Well, I think it is an option that, obviously, should be considered. In many cases, there could be good buys on the market, and it would seem to provide an opportunity for taking advantage of other forms of ownership. And I would think that the committee would want to consider that as being a choice that is available to the Government.

Mr. CLARKE. Thank you.

Thank you, Mr. Chairman.

Mr. YOUNG. Mr. Levitas.

Mr. LEVITAS. Thank you, Mr. Chairman.

Is there any way, Mr. Armbrust, that you are aware of, short of legislation, by virtue of action, say, of OMB or action of the Congress, either through the Budget Committee or through a concurrent resolution, that we could begin to require that leases of more than 5 years be reflected in their full cost within the budget?

Mr. ARMBRUST. Well, I believe this is governed mainly by OMB's instructions that govern budget preparation and accounting. Right now, the number of the pertinent circular escapes me. It is possible that through discussions the committee might have with OMB, if they agreed to change it, it could be done administratively.

Mr. LEVITAS. I am sorry, I did not hear the last part.

Mr. ARMBRUST. It is possible that if OMB wanted to they could make a change administratively in their circular that governs the lease cost.

Mr. LEVITAS. One of the problems that now exists, as your study has pointed up, as well as GAO, as well as reports from this committee on previous occasions, is that there is sort of an element of fiscal or accounting dishonesty associated with treating federally owned construction one way and long-term Federal leases another way.

Mr. ARMBRUST. I would like to comment on that, because the OMB regulations that govern the budget and accounting aspects for the Federal agencies are very clear on how it is to be handled. So nothing is being done by GSA that is inconsistent——

Mr. LEVITAS. Oh, no, no.

Mr. ARMBRUST [continuing]. And the way it is done is clearly prescribed.

Mr. LEVITAS. But what they are doing in the last analysis is a failure to reflect the true cost——

Mr. ARMBRUST. It does not disclose the full commitment, that is true.

Mr. LEVITAS. Well, that is what I am talking about.

Mr. ARMBRUST. This is the problem in the HUD example I gave, which came up just after the congressional budget process was established.

Mr. LEVITAS. And it is done not for an innocent or benign reason. As I see it, it is done to let any administration show a smaller expenditure in the annual budget in which it is reflected.

Mr. ARMBRUST. Yes; although the other argument is that there is some merit, possibly, in treating those costs as kind of an accrual-type expense. Unfortunately, we have a lot of mixed ways in which different programs are measured and assessed, but it does spread the cost on a kind of a pay-as-you-use type basis. But I agree, at the same time, one does not know what the full commitment is——

Mr. LEVITAS. You do not know what the full commitment is, No. 1.

Mr. ARMBRUST [continuing]. The full cost is of the commitment.

Mr. LEVITAS. And No. 2, when the Federal Government builds a building, we all know that we are borrowing money to build that building, and we are going to pay for it over a period of time, and we end up, economically, with the same situation. One gets reflected in the annual budget; the other one does not.

Mr. ARMBRUST. True.

Mr. LEVITAS. I mean, maybe those of us close to Government might not consider that deceptive, misleading, or whatever the other term was I used, but I think most people would.

And as I say, it is certainly nothing that is unique with this administration. It has been the way of doing business for so many years. And the result is, as you point out, as GAO points out, as this committee points out, it creates a bias in favor of going the lease route rather than the construction route, even though it costs the taxpayers less money to do it the construction route.

Is that essentially the case?

Mr. ARMBRUST. I think so.

Mr. LEVITAS. I thank you.

Mr. SHAW. Would the gentleman yield on that point?

Mr. LEVITAS. I would be happy to yield.

Mr. SHAW. I think this is an important observation to make here. I think that is probably true across the structure of all government, and I think that is one of the problems our cities are facing now, with the wearing out of their infrastructure. They are living off the past without the burden of writing off anything more than the repair. The tremendous amount of depreciation that is growing across-the-board and which is passing us by in the form of depreciation is not being shown anywhere, and it certainly, I think, should be. I know that there is a trend even for cities now to be leasing police cars and even fire engines and things like that, so that they do not have the same problem the Federal Government is at this level.

So the problem of the accounting procedure which promotes wasteful spending rather than intelligent investing is at all levels of Government, and I think that the root of that can be laid at the accounting process that we are stuck with.

I thank the gentleman for yielding.

Mr. LEVITAS. I really appreciate that comment from my friend from Florida, because it really is the type of thing that, when we have to go and explain to our constituents the way the Government does business, and we tell them, "Well, we are not really doing it the way the private sector operation might have to do it, and what is worse, we know we are going to have to pay more to do it in order to take advantage of this, for the moment, smaller expenditure," they sort of look at you and say, "Why are you doing that? You are costing us money in the long run." A few years ago, I might say to my friend from Florida, there was some discussion about going to an accrual method of accounting in the Federal Government, and one of the large accounting firms—I think it was Arthur Anderson, if I am not mistaken—published a balance sheet of the budget of the Federal Government, calculated on that basis, and of course everybody gawked right away and said, "Gee, is that what it would look like?" Well, that is what it really is, of course, and this is an area where we can save money, be honest, and do a great benefit, I think, for the public and the taxpayers, and I appreciate your contribution, Mr. Armbrust.

Mr. YOUNG. Mr. Armbrust, I want to thank you very much. I am sure that as we try to work our way through the testimony that we are going to receive relative to H.R. 630 and the General Services Administration, we will be coming back to you, or you can feel free, I hope, to let us know some of your views.

Thank you very much, sir.

Mr. ARMBRUST. Thank you, sir.

[Subsequent to the hearing additional questions were submitted to Mr. Earl A. Armbrust, Deputy Assistant Director, Congressional Budget Office by Representative E. Clay Shaw, Jr. The questions and responses follow:]

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., December 1, 1983.

Hon. E. CLAY SHAW, Jr.,
Ranking Minority Member, Public Buildings and Grounds Subcommittee, Committee on Public Works and Transportation, House of Representatives, Washington, D.C.

DEAR CONGRESSMAN: Enclosed for the record are responses to supplemental questions posed by the Subcommittee after my recent testimony before the Subcommittee on the Federal Buildings Fund program.

It was a pleasure to appear before the Subcommittee. I would be pleased to provide further information as necessary to assist the Subcommittee in its deliberations on the issue.

With best wishes,
Sincerely,

EARL A. ARMBRUST,
Deputy Assistant Director for General Government.

QUESTIONS FOR CONGRESSIONAL BUDGET OFFICE

1. By modifying existing law to require the enactment of budget authority for all Federal Buildings Funds activities, how will this affect the budget authority of individual agencies?

Answer. Two basic approaches could be considered (see Option II-3, in the June 1983 CBO report, pp. 20-22). If a requirement for enacting budget authority were designed to preserve standard-level-user-charge (SLUC) financing, the budget authority for individual agencies would not be affected but the budget documents would need to show an adjustment of government-wide totals in order to avoid double counting of the internal budgetary transactions between agency accounts and the Federal Buildings Fund. (See answer to question #8 for further explanation of changing the budget structure.) A completely different approach would abolish the FBF altogether—reverting to one or more direct appropriations for the public buildings program. If this approach was adopted, the budget authority of individual agencies would decline because the requirement to pay SLUC assessments would disappear.

2. You stated that over a 34-year period, leasing space of 100,000 square feet or more costs roughly 40 percent more than government ownership of equivalent space. Did you include in the cost of government ownership the cost of operations and repairs over this time period?

Answer. Yes. The CBO comparison of federal buildings fund disbursements for leasings versus construction and ownership derives from analyses of data on 42 projects, each with at least 100,000 net square feet of office space. The composite cost of government ownership included the cost of building operation, averaging $2.68 per net occupiable square foot, over the 30 years of occupancy, and the cost building repairs. Annual costs for repairs and alternation begin in the second year of occupancy and approach the following percentages of the estimated construction cost: 1.13 percent per year for the first ten years, 1.47 percent per year for the next ten years, and 1.36 percent year for the last nine years.

3. To correct structural biases in the Federal Buildings Fund, which are pro-leasing, you suggest direct appropriations be made to supplement SLUC funds when necessary. Why not just abolish the Fund altogether and replace it completely with direct appropriations?

Answer. The CBO testimony noted that the Congress could consider either creating budget authority for the use of SLUC income to the Federal Buildings Fund or abolishing the FBF altogether—thus reverting to past practice of relying on one or more direct appropriations. The main argument for abolition is that eliminating the user-charge mechanism offers a simple, straightforward way bringing the program directly under the Congressional budget process. (See CBO report, pp. 21-22.) In addition, this approach could save some GSA and tenant agency administrative costs associated with running the SLUC system. The strongest counter argument is that abolition would sacrifice associating the costs of federal buildings with the operating requirements of individual federal agencies. In short, tradeoff is mainly one of gaining a more simplified approach to budgeting versus losing a slight incentive for agencies to economize on their use of space.

4. Do you feel charging agencies for the space they occupy is an effective means of holding agencies accountable for their peace needs and in keeping with the concept of performance budgeting?

Answer. The FBF user-charge system attempts to carry out the concept of performance budgeting by charging agencies for the space they require. However (see CBO report, pp. 22 and 28), past experience weakens this as an argument for maintaining the current system (see CBO report, pp. 22 and 28). The General Accounting Office has observed that the apparent improvement in use of space in recent years seems to result mainly from changes in reporting. The slight real improvement achieved was attributable largely to central guidance and direction rather than to the imposition of fees by tenant agencies occupying space managed by GSA.

Although user charges may offer greater incentives to economize as agencies look for ways to reduce spending costs, the main force for improvement probably derives from direct involvement and central guidance provided by OMB and GSA. In fact, two factors militate against SLUC savings as a strong management tool. First, much of the room to economize may have already been achieved, as the overall space use of federal buildings compares favorably with that reported by owners and managers of private office buildings (see CBO report, p. 26). Second, marginal improvements in space used in a particular year will generate very small savings for many individual agencies. If, for example, the space used by the Treasury Department had been cut 10 percent in 1982, its total operating budget would probably have dropped by less than 0.3 percent. In sum, it may be difficult for some agencies to permanently attain the Administration's targeted 20 percent reduction in use of space—with or without the SLUC assessment. Finally, if the user charges were abolished, it probably would be easier for the budget to capture whatever savings might result because the Congress would act on centralized gross amounts rather than funds disbursed throughout the budget in individual agency accounts.

5. SLUC was adopted as a means of increasing available for new construction. In your opinion, why has it failed to meet this objective?

Answer. We have concluded that under the FBF user-charge mechanism the public buildings program could not have accommodated much more new construction than actually occurred. As noted in the CBO report, the depressed level of new construction undoubtedly results from several factors.

First, the income available for the FBF program from SLUC assessments reflects private-sector charges for comparable commercial space. As such, the rates reflect private-sector design standards and budgeting that depreciates the cost of improvements over a project's expected useful life. Even though FBF assesses user fees on this basis, the new federal construction is usually more costly and always front-loaded. That is, costs represent total payments regardless of when disbursements are made or the assumed life of the building. (A September 22, 1983 GAO report, "The Pros and Cons of a Separate Capital Budget for the Federal Budget," describes the government-wide implications of adopting depreciation-based costing.)

Second, present funding mechanisms don't disclose the full cost impact of the entire FBF program or its dominant leasing component, which includes long-term commitments under multiyear contracts. Third, general budgetary and fiscal pressures always make leasing seem more attractive in the short run. In this regard, our report notes that both the President and the Congress initially reduced SLUC rates and thus income available for new construction, by some 23 percent (see CBO report, note 5, p. 5).

6. By requiring long-term lease contracts to be funded up front, do you think the bias toward leasing may be further skewed by efforts to enter into shorter term leases?

Answer. No. In describing an option to require full funding of multiyear leases, the CBO report (p. 20) observes that the requirements for full funding could be avoided by entering into short-term leases and then renewing them periodically. Although such activities might not correct the present pro-leasing bias, it is difficult to see how a change to full funding would add to the bias—even with some shift to shorter-term leases.

7. Would you elaborate on why you feel it would be inappropriate to require a fixed percentage of government-owned and leased space?

Answer. Our analysis comparing costs of construction to those of leasing shows that the results are highly sensitive both to the particular discount rate used in the cost comparison and to particular geographic areas and their relative opportunities to convert existing leased space. In addition, small projects (those of less than 100,000 net square feet) almost never show construction to be more economical. (See CBO report, pp. 55–56.) Adoption of a fixed percentage of government-owned and leased space might override efforts to assure selection of the right projects for construction under careful case by case review that uses a proper discount rate. The importance of careful project selection is illustrated by the magnitude of average cost increase in cases where construction is more expensive than leasing. (See Table 8 in CBO report, p. 55.) At a 3 percent discount rate, for example, construction of projects could run up costs by an average of 39 percent if incorrect decisions were made.

8. Establishing budget authority for public building activities could be structured in several ways according to your June 1983 study. Would you outline briefly for us how this might be achieved?

Answer. If the Congress wanted to require annual enactment of budget authority for the Federal Buildings Fund, while preserving the user-charge mechanism, two somewhat unconventional charges would be required in the present budget structure. First, the availability of SLUC income to cover FBI costs would be recorded as budget authority, somewhat similar to the budget treatment used in the Department of Interior's Land and Water Consortium Fund and GSA's National Defense Stockpile Transaction Fund. Because this would mean that budget documents would show SLUC amounts twice, once in agency budgets and again in the FBF account, a second change would require a new entry in budget documents that nets out double counting, somewhat similar to the treatment of agency contributions to the Civil Service Retirement Trust Fund. As no precisely analogous account exists, the relatively simple changes would require tailoring to fit the particular circumstances of

FBF. More detailed information may be found in the CBO report under Option II-3 (pp. 20-21) and in Appendix Table A-3 (p. 68). Neither of the two changes would alter the way individual federal agencies occupying the FBF facilities currently budget for the space they use.

9. How was the current discount rate of 7 percent determined? If the 7 percent rate skews the decision towards leasing as both your studies and GAO's conclude, why even require a comparison if it just substantiates a decision which has already been reached?

Answer. As stated in the CBO report (p. 45), the 7 percent discount rate was set by the Office of Management and Budget in 1972 and intends to reflect the real rate of return on general purpose real property leased from the private sector. We also observe that it is impossible to replicate or evaluate in detail the basis for the rate stipulated in OMB Circular A-104. Because the rate should be changed, however, doesn't mean that case-by-case comparisons of the costs of leasing and construction shouldn't be required using a proper rate.

10. You stated that a different discount rate may be appropriate as borrowing experience changes over time, therefore, it would be inappropriate to set a particular rate in law. What kind of time frame are we talking about?

Answer. The CBO report (p. 58) observes that "any choice of a discount rate would involve some degree of uncertainty." For this reason, we suggested that changes in the rate may be appropriate as borrowing experience changes over time. Because new buildings take several years to plan, fund, and construct, too frequent a change in the discount rate could create confusion in the decision-making process. From this perspective, a review period might require evaluation of the discount factor every five or six years. Because no hard and fast rule emerges, the legislative history of H.R. 630 might require the Executive Branch to revise the rate without specifying a particular time frame. In any event, the ten-year lapse since the current rate was set suggests a re-examination is overdue.

Mr. YOUNG. I would like to thank Ms. Beebe from the Department of the Treasury, for allowing Mr. Carmen, who has a commitment, to testify in front of her.

So at this point, I would like to call up Mr. Carmen, the Administrator of the General Services Administration. He will be accompanied by Mr. Richard Haase, Commissioner of the Public Buildings Service, and Mr. Ray Kline, Deputy Administrator.

Without objection, Mr. Carmen, your full statement will be made a part of the record, and you may summarize, sir, in the method you would like.

[Statement referred to follows:]

STATEMENT OF GERALD P. CARMEN, ADMINISTRATOR OF THE GENERAL SERVICES ADMINISTRATION

Mr. Chairman and members of this committee, I appreciate the opportunity to appear before you this morning to support the efforts of the executive branch, the Senate, and this committee to reform the public buildings practices of the Federal Government as we strive to provide the best services in the most efficient manner possible to our customer agencies and to the American public. With me today are GSA's Deputy Administrator Ray Kline and the Commissioner of the Public Buildings Services, Richard Haase.

Since my arrival at GSA in May 1981, we have made substantial progress in improving the performance and responsiveness of our Public Buildings Service.

For example, we are currently overseeing a massive government-wide effort to better utilize the space occupied by Federal employees. We are continuing to move the Federal work force from leased space to Government-owned space whenever feasible. We are outleasing vacant space for additional revenues when space reductions make that a possibility. We have been strengthening our fire safety, OSHA and security programs to provide safe working environments for Federal employees and members of the public who spend time in our buildings. And most recently, we have begun delegating authority to individual agencies and to private contractors for many everyday buildings management activities.

Through all this, though, is a commitment to efficient management practices designed to make the best possible use of the finite financial resources of government.

In any $2.3 billion business, which the Public Buildings Service is, there is going to be room for improvements. In the Public Buildings Service, there is plenty of room for improvements.

As we examine the legislation which governs our nation's public buildings, and as we consider new legislation to address some of our concerns, several questions are immediately raised about the role of GSA in managing our nation's Public Buildings Program.

Among these questions are: Should legislation address just the space controlled by GSA, or should it address all space controlled by the Federal government?

Should property management as it relates to our nation's public buildings be centralized or decentralized?

Likewise, should policy-making be centralized or decentralized?

How much, or under what circumstances, should GSA delegate leasing or building operating authority?

Should PBS be given any additional tools for use in better managing our public buildings?

Should GSA have some of the same financial tools as the private sector, such as the right to pay for options on land, on buildings, on leases?

How can new building construction best be financed?

Should legislation give GSA authority to manage the government's space inventory or merely allow it to act as a rental agency offering up space?

Should the government's offices be located in expensive downtown areas of our nation's cities, or should we require agencies to relocate to less expensive quarters?

In light of these questions and the countless others that will undoubtedly be raised as we work to improve the way our Federal buildings are built and managed, I propose that two special task forces be formed; one from among members of the House and Senate, and the other including members of the executive branch and qualified experts from private industry to examine these practices and offer the best solutions possible to address any areas that may warrant our attention.

As leaders of this Government, we owe the American people a comprehensive examination of our entire program to ensure that we are doing all we possibly can to efficiently manage this area of Government operations. It is an examination I think is well worth the time and attention of us all.

At this time, I would be happy to respond to your questions and comments.

Mr. YOUNG. Please proceed.

TESTIMONY OF HON. GERALD P. CARMEN, ADMINISTRATOR, GENERAL SERVICES ADMINISTRATION, ACCOMPANIED BY RICHARD O. HAASE, COMMISSIONER, PUBLIC BUILDINGS SERVICE, AND RAY KLINE, DEPUTY ADMINISTRATOR

Mr. CARMEN. Thank you, Mr. Chairman.

Mr. Chairman, and members of this committee, I appreciate the opportunity to appear before you this morning to support the efforts of the executive branch, the Senate, and this committee to reform the public buildings practices of the Federal Government as we strive to provide the best services in the most efficient manner possible to our customer agencies and to the American public.

With me today are GSA's Deputy Administrator, Ray Kline, and the Commissioner of the Public Buildings Service, Richard Haase.

I ask that my formal statement be included in the record. However, I would like to make a few additional remarks at this time.

Since my arrival at GSA in May 1981, we have made substantial progress in improving the performance and responsiveness of our Public Buildings Service. Throughout, there has been a commitment to efficient management practices designed to make the best possible use of the finite financial resources of Government.

In any $2.3 billion business, which the Public Buildings Service is, there is going to be room for improvement. In the Public Buildings Service, there is plenty of room for improvement.

As we examine the legislation which governs our Nation's public buildings, and as we consider new legislation to address some of our concerns, several questions are immediately raised about the role of GSA in managing our Nation's public buildings program.

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Should the Government's offices be located in expensive downtown areas of our Nation's cities, or should we require agencies to relocate to less expensive quarters?

In your letter of invitation to this hearing, Mr. Chairman, you raised the issue of the balance between leasing and construction within our public buildings program. In order to make the best possible use of the resources available to us to maintain the proper balance, we need the same tools that are available to the private sector in this field.

Mr. Chairman, GSA supports the intent of H.R. 630 and the desire of this Congress to help us in our mission. However, there are provisions of this bill we must question. In the light of the recent Supreme Court ruling on the legislative veto, for example, the exception of a bill dealing with the authorization process is unacceptable. In our view, an authorization bill is necessary so that we at GSA are presented with a clear, defined expression of congressional intent concerning the building construction program of the Public Building Service.

In addition to these comments, you will hear from Commissioner Haase in a few moments on some of our other concerns with regard to this legislation. As leaders of this Government, we owe the American people a comprehensive examination of our entire program to insure that we are doing all we possibly can to efficiently manage this area of Government operations. It is an examination I think is well worth the time and attention of all of us.

In closing, Mr. Chairman, I thank you for the opportunity to present our views on this important area of public concern and would be happy to respond to your questions and comments.

I would also like to add that we appreciate very much the relationship we have had with this committee and with its staff. Over the last 2 years, with the various subcommittees we have dealt with, this subcommittee has been one that has helped the General

Services Administration and PBS, in particular, to get our act together, and we appreciate the cooperation.

Mr. YOUNG. Thank you very much, Mr. Carmen.

Does the administration support section 3(c) of H.R. 630, which would authorize GSA to borrow from the Treasury for periods up to 30 years, to finance the acquisition or construction of public buildings, a provision commonly referred to as time financing?

Mr. CARMEN. I cannot speak for the administration this morning, but we have gone on record, as far as the General Services Administration is concerned, in favor of giving the Public Buildings Service all the tools that the private sector has to conduct its real estate operations, and I think that you would want to incorporate some form of stretched out payment plan in any new bill.

Mr. YOUNG. H.R. 630 requires full funding for leases in excess of 5 years. As you know, currently, only the annual cost of a lease appears in a particular budget. Therefore, although for fiscal year 1984, a figure of $880 million is only attributed to leasing, the real long-term commitment is more in the neighborhood of about $2 billion.

Does the administration support full funding of the leases over the term of the lease as well as the funding of construction?

Mr. CARMEN. GSA had a distinct bias toward leased property in the past. We do not have that bias anymore at GSA, and we have been trying to reverse that procedure.

Personally, as far as the bookkeeping or the accounting systems within the Government are concerned, I think it would probably do the Government a lot of good to have everything recorded in a current-year budget, but I do not think it is the turning point on the issue.

As far as PBS and GSA are concerned, policy issues are not at stake, but execution is. The better we learn to manage the Public Buildings Service, the less problem we will have with those kinds of issues in the future.

Mr. YOUNG. I think that is all I have for right now, Mr. Carmen.

Mr. Shaw?

Mr. SHAW. Mr. Carmen, in your statement, you made reference to the private sector, businesslike principles and practice. Would you expand on that, particularly in the area of accountability? As you are aware, this bill attempts to put leasing, accounting-wise, at least, on an even footing or a level footing with owning construction, purchasing.

Mr. CARMEN. The point to be made concerning private sector initiatives and private sector accounting systems is in terms of execution—of the way we do our work. If we have the correct set of attitudes and handle our work effectively, then we will be evaluating the leasing versus Federal ownership decision in the correct fashion. We will be looking at leases in the true terms of whether they are actually 5-year leases or 20-year leases, long-term or short-term situations in terms of Government space needs. We will be looking at real values, what the Government gets to keep and what the Government has to give up when they lease something. The comment has been made, I think, in this committee in past years, that we pay for buildings for 20 or 30 years, and we end up with a bagful of receipts. A lot of that is true.

What I am talking about when I use the term private sector evaluations, is a bottom line kind of evaluation, trying to have the taxpayers end up with some real gain from the money we spend. It is not easy, and I am sure it has been tried by others before, but I think we have made progress. We have a long way to go. In terms of legislation, whether it is this bill or a new bill or the existing bill, the real problem that I found in my short tour of duty in Government is not so much the legislation that we operate under, but the way we treat the legislation. Even under the present legislation, we think we can make a lot of improvements although we think we need a new act.

Mr. SHAW. I am not sure that your answer really got to the heart of the question. You are no doubt somewhat the prisoner of the accounting system that you have to maintain. Anything you purchase, it has to be treated as a deficit, even though it might be an investment. This has got to have a material effect on your judgment as to the wisdom of purchasing versus leasing. I think that is true of any administration; it would certainly be true, if I were sitting in your position. I would certainly have that as a consideration.

It would appear to me that if you were to make all the purchases that might be wise purchases of opportunity, new construction or whatever—we have seen too many leases come through affecting courtrooms and things of long-term benefit that we know the investor has to writeoff over a period of the lease. It appears to me that the crux of the problem probably comes down to the accounting methods used and your accountability through the administration to the taxpayers in the form of a deficit. This bill attempts to address that by actually penalizing you equally in your leasing procedures.

It would occur to me that perhaps beyond this bill, that we should be addressing a general assault on the accounting procedures used by the Federal Government in total.

Would you care to comment on that?

Mr. CARMEN. I think your premise is correct. The point that I tried to make, and will again try to make, is that we now at GSA analyze our budget and analyze our accounting system with what we are trying to do. We do not look at the accounting system as something that is going to hold us back from doing what is right. We know, for instance, if a building costs $80 million to build and then if we lease it over a 20-year period, we are going to pay twice what the building cost for that lease. We analyze that as a bad deal, and we would take it through the budget process to buy a building. We would not let the fact that a deficit or an accounting system was driving us toward leasing.

Now, the end result may be that after we put it through our process, and after we screen it, and after we analyze it, because of the way the budgets are put together on a national scale, we are not able to build the building. The agency is not in the posture we are aiming for yet. GSA is really moving into a new era in which the Federal population has stabilized and is coming down. We have space initiatives now, as you know, which reduce the average consumption and also require more control and more scrutiny on space.

We expect over the next 2 or 3 years, the actual space in Government to come down somewhere between 5 and 8 million square feet of leased space. That is contrasted to an 8 million square-foot increase in space that was projected for that same period when we arrived. That is a 14 million square-foot turnaround in expected use of space.

I am not trying to take you off the track of your question. Your question deals more with the formulation of the national budget than it does with how GSA runs. But we are trying to make good judgments regardless of the accounting system.

Mr. **Shaw**. Well, I think we are all, both in the private and the public sectors, somewhat slaves of the accounting systems that are set up for us, and that the Federal Government does not enjoy an historical approach to accounting, and rather just goes strictly on a cash basis. That holds us back from making some of the decisions that we would otherwise make. I have seen a number of leases and prospectuses coming through this committee which it would appear right on its face that we would be better served by an aggressive expansion of Federal ownership. And I do realize—and I do not want to sound like I am being critical of you, because I am certainly not—Mr. Haase has appeared many times before this committee, and I think he shares your opinion, as well as the opinion of the administration, and I might say, as well as the opinion of this subcommittee, that we must move toward ownership and away from leasing. We expanded too quickly in past years, and we went into too much leasing where we should have been going in the other direction.

Having said that, and having gotten you to nod your head, I would ask you one further question, and this will be my final question. Do we have, or have we prepared any long-term planning beyond—you know, in Congress, we tend to plan in 2-year segments, and administrations seem to plan in 4-year segments—have we developed any plan, or are we about to develop some plan as to what are the long-term objectives beyond this administration, even beyond the next 4 years? Do we have something like a 10-year plan as to phasing out leased property and getting into an active acquisition process?

Mr. **Carmen**. We are presently involved in a 10-year study. We have not submitted a 5-year plan this year, because the general outlook on the expectations of space, based on old planning, was for an expanding Government and we felt that the planning that we had done in the past was not suitable for the present or the foreseeable future. So we are presently updating our planning to put together a plan that shows the contraction in Government and also puts us into considerably more Government-owned space than leased space. We expect to go from roughly 50 to 55 percent Government-owned space to 80/20 in the future. The planning process takes us to 80/20—80 percent owned; 20 percent leased.

Mr. **Shaw**. As just a followup question, have you analyzed the effect to the deficit that this plan would have, based upon the present system of Government accounting?

Mr. **Carmen**. No, I do not think we have, but we will do that.

Mr. **Shaw**. Thank you.

Thank you, Mr. Chairman.

Mr. **YOUNG**. Mr. Clarke.

Mr. **CLARKE**. Mr. Carmen, we appreciate you coming today. Pursuant to a resolution adopted by the House Public Works Committee on December 9, 1980, the Administrator of GSA was directed to submit to Congress by the 15th day after Congress convenes each year a GSA management plan for accommodating the public buildings needs of the Federal Government for that fiscal year and the next 5 fiscal years. In this regard, on February 15 of this year, Ray Kline, Deputy Administrator, wrote to the chairman of this committee, Mr. Howard, requesting a time extension of 30 days for submission of this year's fiscal 1983–89 management plan. What is the status of that plan?

Mr. **CARMEN**. The status is presently about where it was in February. We are still trying to develop a plan that we think is worthy of submitting to the Congress. My personal review of the past plans that have been submitted, led me to conclude that they were not satisfactory. What happened to those plans was that the following year we were on the Hill trying to explain why we had not done what we had said we were going to do, or had not carried out our own planning process.

We will be bringing a plan to this committee but it will be a good one, and at such time as we really feel that we are ready. We have been trying to refine it before we send it up.

Mr. **CLARKE**. Do you have any estimated time of arrival?

Mr. **CARMEN**. Well, the Commissioner tells me within 90 days. If the record will show that he gave you the 90 day estimate, I will deal with it.

Mr. **CLARKE**. Mr. Carmen, H.R. 630 would raise the approval threshold for alteration, construction, and leasing from $500,000 to $1 million, require approval for any alteration to lease space in excess of $500,000, and require approval of all exchanges of property in excess of $1 million. Does the administration support these provisions?

Mr. **CARMEN**. My own opinion of that provision is that in the repair and alteration area, it would be preferable to the head of GSA and I think to the Commissioner, that we had no limitations. While I can understand Congress interest, one of the great drawbacks in our ability to take care of the repairs, the alterations, the safety factors, and the things that this Government needs, is the threshold limitation.

If you look back 10 years or less, you will find that our budget was in the neighborhood of $1 billion, $1.1 billion, or $1.2 billion. Today, it is in the neighborhood of $2 billion, to $2.3 billion. If you match that against constant dollars or dollars that are adjusted for inflation, you will find that there has been almost no increase—in fact, I think, a slight decrease in the money we are spending on public buildings. At the same time, inflation has had an impact on the law, so that when we come up for a half million dollars now, or $500,000 worth of authority, you are really dealing with something in the neighborhood of $200,000 worth of authority, which is hardly enough to fix an elevator—in fact, in many cases, it is not.

I think the restrictions on repairs, alterations, safety, fire, and any kind of related items, ought to be placed under the authority of those who run the Public Buildings Service and GSA. Then if the job is not done correctly, they ought to fire them and get new ones.

Mr. CLARKE. In other words, have no set minimum.

Mr. CARMEN. I think new construction is the kind of thing that Congress ought to have authority over, and certainly, it is a very important element in the process. But managing the repair and alteration portion of that fund really ought to be part of the management of the GSA.

Mr. CLARKE. Mr. Carmen, other provisions of H.R. 630 would authorize GSA to take options for purchasing leases, as well as authorize GSA to acquire options on property which may be used in the future as a site for a Federal building. Does the administration support these provisions?

Mr. CARMEN. Yes.

Mr. CLARKE. I have one final question, Mr. Carmen. Executive Order 12411, issued March 29, 1983, directs heads of agencies to use work space more effectively. To supplement the Executive order, GSA put out a directive that all agencies should achieve a ratio of 135 square feet per employee. This committee has been contacted by an individual from Decatur, Ga., who states that GSA included in the definition of office space for people, nonpeople areas, hearing rooms, mailrooms, and conference rooms. He states that that reduces space to about 80 feet per person.

Could you comment on this?

Mr. CARMEN: That is not true. I think the agencies and our space-planning people cooperate together. Every agency has a different mission assignment different requirements and different needs. So when we review their space planning, we take into consideration all those kinds of factors. We think that the plan that we put together is comparable, and in some ways more generous than some in the private sector. And it is starting to show some results. There are waivers when necessary. This is a plan which really involves the cooperation of all Government agencies, and I think it is coming along very well.

Mr. CLARKE. In other words, that gentleman's statement is incorrect?

Mr. CARMEN. Well, I do not know what the situation is in that particular building. I would say it is substantially incorrect. I can really speak directly for my own agency and how we have come down to 133 square feet of space per person. Our total use of space is down about 30 percent in 3 years, and we do not think it has caused any disruption.

The bottom line on our planning simply is this. If, in reducing space, there is a fallout at the end of the space that is used, the plan is working; if there is not, it is not working. You may find individuals who are in 80 square feet of space, but that would be an agency plan, not a GSA-prescribed rule.

Mr. CLARKE. Thank you.

Thank you, Mr. Chairman.

Mr. YOUNG. Mr. Carmen, a last question—and I am looking at the clock. It is getting close, and maybe if any other committee members have any other questions of Mr. Haase or Mr. Kline, they could stay.

The Senate Committee on the Environment and Public Works, in reporting their public buildings reform legislation this year, abolished the Federal building fund. The House Committee on Appropriations, in their Fiscal 1984 Treasury, Postal Service, and General Government Appropriation Report, recommended the appropriate legislative committee carefully review the record of the fund and make those changes in the law which would provide a more direct way to establish budget requirements in a more effective and less expensive way to control Federal space.

Mr. Carmen, what alternate system would you recommend we put in place, assuming that we abolish the Federal building fund?

Mr. **Carmen**. We are not prepared to concede that point. The Congress used a good deal of wisdom when it established the Federal building fund, and the standard level user charge. We think it was a good idea.

We do not think that we have always made it work as well as it should. We think sometimes we have not really done the best we could do in administering that program.

Congress has not always brought it up to the levels that it should operate at, comparable to the private sector. We think there may be some amendments or some changes which might go into legislation which could address new construction in some way or perhaps separate new construction out.

But basically, a concept that makes space have some value so that an agency knows it is dealing with a very expensive commodity which the taxpayer has to pay for and which in turn, creates some budgetary consideration on their part, is a very good system.

We are now working on a detailed plan and a detailed investigation of all public buildings. The planning also addresses the question of leasing us buildings. We are trying to set up an income and expense accounting system, on every single building within GSA. This is going to point up losers, and winners. It is certainly going to show that Government-owned buildings are much more desirable than leased buildings. It is going to show the kind of effective or not so effective job we do on the various buildings, and I hope, in the end it is going to allocate the kind of money that ought to go to the various buildings.

The present system works very well. Going to some system which does not put value on space, does not control the use of space, and leaves the determinations up to some large budget in which space is lost will not effectively work to control space.

Mr. **Young**. The fact that the Senate committee—they are reporting this—I do not know if they have passed the legislation yet, but they have reported it out, I imagine, to the floor—what if the Senate committee would insist on abolishing this fund? Would you have a chance to respond?

Mr. **Carmen**. I have not had a chance to respond to the new version of the Senate bill but we consider that a significant change. That change bothers me.

Mr. **Young**. Well, I suggest we had better try to contact everybody who is involved before this committee can really address that question.

Mr. **Carmen**. Mr. Chairman, in my prepared remarks, I suggest that perhaps a Senate and House task force and a task force from the executive branch should look into the Public Buildings Service and the way it functions and the things it ought to do. At the same time as you people are coping with this new piece of legislation, we might be able to get together and turn out a real good bill.

Mr. YOUNG. Well, that would be fine.

Are there any other questions for Mr. Carmen, Mr. Haase, or Mr. Kline?

[No response.]

Mr. YOUNG. If not, gentlemen, I want to thank you very much for your appearance here this morning.

Mr. CARMEN. Thank you, Mr. Chairman.

Mr. YOUNG. Our next witness will be Ms. Cora Beebe, Assistant Secretary for Administration, Department of the Treasury, accompanied by Mr. Haworth and Mr. Perlman.

The committee would like to thank you very much, Ms. Beebe, for allowing Mr. Carmen to testify because of his time constraints.

Without objection, your formal statement will be made a part of the record.

[Statement referred to follows:]

STATEMENT OF HON. CORA P. BEEBE, ASSISTANT SECRETARY OF THE TREASURY FOR ADMINISTRATION

Mr. Young and members of the subcommittee: I appreciate this opportunity to discuss with your subcommittee H.R. 630, a proposed bill to establish certain public buildings policies for the Federal government. Treasury has long been concerned about the important problem of how best to address the space needs of the Federal government.

The Treasury Department is one of the largest users of space within the Federal establishment, with over 2,000 separate offices and duty stations throughout the United States and overseas. Treasury employees occupy approximately 36 million square feet of space. Most of the Department's business is conducted in general purpose public buildings managed by GSA. The bill does not address the buildings already owned and administered by the Treasury Department. It does, however, address space provided to the Treasury Department by GSA.

We are pleased to see several policy statements included in the bill which we have supported in past initiatives. These include: increasing the ceiling on prospectus submission to projects over $1 million; providing for the release of lease terms to agency representatives; and providing authority for the GSA Administrator to carry out emergency repairs to facilities.

Treasury is pleased to note in Section 3(c) that agency needs are to be taken into consideration in preparation of a prospectus. Specifically, this section requires the following to be considered:

(A) the geographic location of the population to be served;

(B) the appropriateness of the location with respect to the service being rendered;

(C) the availability of public transportation; and

(D) the availability of existing or planned housing which is adequate to meet the needs of present and prospective Federal employees and is available on a nondiscriminatory basis.

We are concerned, however, that this same section might be interpreted to provide the Administrator with authority to locate or relocate an office of a Federal agency without approval of the agency head. Further, we continue to be concerned about giving preference in locating Federal facilities to distressed areas.

Section 9 of the bill (new section 24, page 23, line 17) provides for consultation between agency heads and the Administrator of GSA before requesting the relocation of an office from one area to another area. The intent of this section is unclear. Consultation regularly occurs under present circumstances and is definitely beneficial. If the intent is to require high-level consultation on minor relocations within the same metropolitan area or rural vicinity, we believe this is unnecessary.

Section 10(a) of the bill (page 24, line 6) would generally prohibit the acquisition of space for non-headquarters offices within the Washington, D.C. area. We believe this too restrictive, since it does not recognize the need of an agency head to decide on the location of an office based on mission requirements. For example, the non-headquarters office of the U.S. Secret Service, which provides protection to foreign embassies in downtown Washington, could not reasonably be located outside of the downtown area and still fulfill protection responsibilities. Similarly, the Internal Revenue Service may need to locate certain offices providing taxpayer services in the downtown area in order to assist city residents.

I should also note that H.R. 630 appears to contain a number of legislative veto provisions that are unconstitutional under the *Chadha* decision. I understand that the Department of Justice will be providing the Committee with an analyses of these provisions shortly.

In closing, I would urge that the Subcommittee address the above concerns in any final action on the bill. I will be happy to answer any questions that the Subcommittee may have.

TESTIMONY OF CORA BEEBE, ASSISTANT SECRETARY FOR ADMINISTRATION, DEPARTMENT OF THE TREASURY, ACCOMPANIED BY CHARLES D. HAWORTH, DEPUTY DIRECTOR, OFFICE OF GOVERNMENT FINANCE AND MARKET ANALYSIS, AND RONALD A. PEARLMAN, DEPUTY ASSISTANT SECRETARY FOR TAX POLICY

Ms. **Beebe**. Thank you, Mr. Chairman, and members of the committee.

We are very pleased to be here, and we are especially pleased to note some provisions in the bill that we feel would be helpful to Treasury.

We are one of the largest users of GSA-supported space. We find appropriate the provisions in section 3(c) that provide for agency location in terms of the population to be served and the service we are providing, as well as the availability of transportation and housing.

We do, however, continue to be concerned about preference being given to locating Federal facilities in distressed areas.

We also are somewhat concerned about the language in section 9, which concerns consultation with the GSA. We have a very effective ongoing dialog with GSA, but this provision might be interpreted to require consultation on small moves or minor matters between agency heads and the head of GSA. If this was the intent of the language, we think this might be rather cumbersome since in any given city, the Treasury Department is likely to occupy anywhere from 10 to 50 buildings, and we often move our staff between those locations.

We also are concerned about the provisions in section 10(a), which would restrict GSA's authority to locate agency facilities in downtown areas unless they are headquarters facilities. For example, in Washington, D.C., we locate services in the downtown area because they meet the needs of our clients. We have the taxpayer services program in the Internal Revenue Service, which serves the inner city clientele. Locating that facility in the suburbs would not meet the same purpose. We locate certain of our Secret Service functions that are associated with protection of missions downtown, because it facilitates their work.

We would be pleased to answer any questions now, or if you would like to provide them to us in writing, we could respond.

Mr. **Young**. Thank you very much, Ms. Beebe.

Ms. Beebe, I note with interest your concern with respect to the administration being authorized to locate or relocate an office of a Federal agency without approval of the agency head. That is not the intent of this section, but rather, the intent is that GSA, the agency head, and local officials agree at an early stage, before a decision has been made internally within GSA as to whether an agency would be located, to discuss such relocation.

Further, I note your concern about giving preference in locating Federal facilities to distressed areas.

Could you elaborate on that statement?

Ms. **Beebe**. Thank you, Mr. Chairman, yes.

As you know, Treasury is a multifunction agency, and we are concerned about locating our facilities where it would meet our needs. For example, in our Customs area, we propose to locate those offices near where traffic and cargo are coming in. We serve the public in the Internal Revenue Service and we have tried to place our offices where the public will have access.

We also have a concern that we do not put our employees in situations of risk where transportation and other services are not good. We have had to do that in the past and have had some concerns about it.

Mr. **Young**. But as far as Customs and so on, do you feel that a lot of times, particularly with the suburban-type airports, that being able to locate closer to international flights and so on is pretty important?

Ms. **Beebe**. It is essential to carrying out that mission.

Mr. **Young**. I recognize that problem in the St. Louis area, I can tell you that.

Ms. **Beebe**. Yes, sir.

Mr. **Young**. I am going to ask Mr. Shaw at this point, Ms. Beebe, if he has any questions.

Mr. Shaw.

Mr. **Shaw**. Yes, Ms. Beebe, I would like to address this question to Mr. Pearlman, who I understand is the tax expert on your panel.

What is the current approach of the IRS concerning the amount of lease money paid, as to the allocation of a portion of that to the purchase of an option? This bill that we are looking at would make options legal for the Federal Government, which would be a tremendous advantage in coming across these types of leases. But of course, any landlord would have to consider the question as to whether he could allocate a portion of the lease money as a purchase of the option itself.

Is that question too broad? If it is, perhaps you can give me an equally broad answer.

Mr. **Pearlman**. Well yes, I may have to do that, or at least, perhaps, we will have to refine the answer, Mr. Shaw. If I understand your question, it is if someone pays for an option as part of the lease negotiation, the owner grants the option to purchase the property in the future?

Mr. **Shaw**. That is correct.

Mr. **Pearlman**. In a normal lease negotiation, there is no allocation of consideration to the option. That is, if there is an option granted to a tenant to purchase, the property at the end of the lease term, there is typically no allocation of any portion of the rent to the option. Now, if a separately-bargained option for consideration were negotiated between the parties, the Internal Revenue

Service would recognize the separate allocation to the option, but that is very unusual in a lease arrangement.

Mr. **Shaw**. Well, the type of instance I am looking at is where there would be a very favorable price to the Federal Government as far as the option is concerned. Of course, the landlord will take that into consideration as to the consideration that he is receiving over the term of the lease. Perhaps in negotiating such leases, it would be to the best interest of the landlord, and perhaps even in the long-term interest of the Federal Government, to actually allocate a portion of the rents paid toward the purchase of that particular option.

Mr. **Pearlman**. If an option is negotiated as part of a lease arrangement which provides that the lessee can lease the property for 20 years at some agreed rental, and then has the right to acquire the property for $1 at the end of the lease term, the proper tax analysis of that transaction under current law would be to recharacterize that transaction as not being a lease for income tax purposes. In that case, the user is going to ultimately purchase the property, and for Federal income tax purposes, that transaction would be treated as a purchase on a deferred payment basis. If the option is a fair market value option, however—that is, if the lessee has the right to purchase the property in the future for its then fair market value, leaving certain other factual questions aside—that transaction would be viewed as a lease, and typically, unless specific funds are paid for that option, nothing would be allocated to it.

Mr. **Shaw**. Thank you.

I yield back my time, Mr. Chairman.

Mr. **Young**. Thank you, Mr. Shaw.

Mr. Clarke.

Mr. **Clarke**. Ms. Beebe, according to testimony we expect to receive from officials of the Building Owners and Managers Association this morning, they state that they understand the administration is considering a proposal to include as a cost of leasing some portion of the depreciation deductions taken by a lessor to the Federal government.

Is the administration considering amending Circular A-104 in this respect?

Ms. **Beebe**. I am unfamiliar with that, Mr. Clarke. I will get back to you. I am not aware of that.

Mr. **Clarke**. OK thank you.

That was the only question I had, Mr. Chairman.

Mr. **Young**. Thank you, sir.

Mr. Levitas.

Mr. **Levitas**. Thank you, Mr. Chairman.

Ms. Beebe, I am somewhat surprised that your testimony did not touch on a matter which the Treasury would be very much involved in, and that is section 3(c) of H.R. 630, which would authorize GSA to borrow from the Treasury for periods up to 30 years, to finance the acquisition or construction of public buildings, what I call time financing.

Would you please let us have your thoughts on that, from the point of view of the Treasury?

Ms. **Beebe**. Mr. Levitas, at the moment OMB is considering from an overall policy point of view whether or not such authority should be granted to GSA. That is why my testimony did not specifically address the issue.

Treasury's policy, with regard to loans however, has been that they should be made subject to the conditions and terms set by the Secretary of Treasury. Those conditions normally include full funding, interest from the date the loan is made through its maturity, and normally, a loan would be extended for a period less than the useful life of the property. If such conditions and terms were included in any provision, Treasury would find that acceptable.

Mr. **Levitas**. Are there not other circumstances in which there is borrowing from the Treasury for public purposes of this sort?

Ms. **Beebe**. There are a number of examples. For example, the Pennsylvania Avenue Development Corporation borrows from the Treasury Department; the Smithsonian Institution has borrowed from the Treasury. We can provide you more details on that now, or we can provide you a fuller range of discussion of that in writing.

Mr. **Levitas**. Well, I would like you to supply us a rather extensive list of current and recent borrowings of that sort. But I think for the purposes of the moment, it is fair to say that this concept is not an unusual concept, and certainly not without precedent.

Ms. **Beebe**. One of the issues that is somewhat unclear from the bill is in the terms—the repayment would begin when the building is completed and occupied, but it is unclear whether interest would accrue during the period of construction, and that is of concern to Treasury. We would hold that interest would accrue from the date of the loan, and if the terms of the bill state that repayment begins when the building is occupied, we would assume that the amount to be repaid would include the interest accrued during construction period.

Mr. **Levitas**. Let me turn to another aspect of the question that Mr. Clarke asked and it may be that it goes beyond what you are in a position to address. But in determining the cost to the Government of a particular project, is the loss of revenue as a result of, that determination generally taken into account in calculating what the cost is?

Mr. **Pearlman**. I think, Mr. Levitas, that at the present time, it is not. Let me see if I can also respond in part, at least, to Mr. Clarke's question. I apologize, I was not familiar with the OMB circular number.

But OMB Circular A-104 is currently undergoing a review and a presumed revision. That is a joint project between OMB and Treasury. And it is anticipated that the revision will take depreciation into account, which I think is the question you asked, Mr. Clarke, and should therefore, Mr. Levitas, take into consideration the expenditure side of the budget.

If the Governmental Leasing Tax Act, or the so-called tax-exempt leasing bill, which is presently pending in the House, ultimately is enacted, ground rules will change as to what the tax expenditure side of a lease will look like.

Mr. **Levitas**. Under the Tax Reform Act of 1983, which has been reported by the House Ways and Means Committee and will probably be acted on in the House next week, there is a provision in there that you are probably familiar with, relating to depreciation, or the tax treatment of property leased by tax-exempt entities like the Federal Government. Could you comment on how this new legislation would impact on the owners of property who rent space to the Government? It obviously is going to result in a restriction of depreciation that is taken under such circumstances. Do you have any observations as to the advantages or disadvantages of the present structure as it relates to building owners who lease to the Federal Government?

Mr. Pearlman. The legislation to which you refer, which has been made part of the Tax Reform Act of 1983, is the legislation to which I referred just a moment ago. It will have an effect, as you point out, on Government leases. The legislation does extend the definition of tax-exempt entity to include not only State and local governments, but the Federal Government.

Let me point out that the way so-called tax-exempt use property is defined in the statute is designed to encompass leases to tax-exempt or governmental entities when the tax-exempt or governmental use of the property is significant. For example, there is a provision in the bill that would exclude leases of relatively small portions of a piece of property to the Government, so that it would not adversely affect the owner's depreciation of that property.

But if a property—let us just hypothetically say a building is fully leased to the Federal Government, then the proposal will change the depreciation rates for property placed in service in the future. The act will not go back and affect propoerties that have been the subject of Government leases for a number of years. There is an effective date——

Mr. Levitas. I think it is, what, May 23.

Mr. Pearlman. May 23, 1983, with some exceptions for transactions that were in process on that date. But assuming a new piece of property is leased today, not having been negotiated prior to May 23, then under the proposed legislation, depreciation on the ACRS method would be limited to straight line, using in the case of real property, the greater of either a 40-year useful life or 125 percent of the lease term. That would be contrasted with the accelerated cost recovery system, ACRS, 15-year useful life. Obviously, the tax benefit resulting from the depreciation in the early years of the property will go down, and therefore, the depreciation will be spread over a longer period of time.

I should note that there is also a provision in the bill that affects the utilization of the rehabilitation tax credit, which in some cases, can affect a Federal Government lease, if the property is financed with tax-exempt obligations. But I think in the case of Federal Government leases, probably the depreciation piece of the legislation is the more common and the more significant one.

We are supportive of that provision of the bill—our evaluation of that provision really is not one looking at increasing Federal tax revenues, but rather, a recognition that there are two pieces to a lease that is entered into by the Federal Government—as has been made clear in the earlier questions by the members of the subcommittee this morning. Not only is there the cost side of the budget, that is, the actual rental obligation, but there is the tax expenditure side, the cost to the Federal Government reflected in the tax savings that are realized by the lessor through the tax benefits provided by current law.

The purpose of this bill, and the reason we support this aspect of the proposed legislation, is that it will, hopefully, force a proper budgeting analysis of Federal leases. It is not a provision that says to Federal agencies that they cannot lease. It may have the effect of reducing the number of leases, but there is nothing in the bill that prohibits the Federal Government from leasing property, and indeed, I think people who have been involved with the legislation recognize that the leasing of property by the Federal Government will continue to be appropriate. Hopefully, however, that decision will be made by looking at all considerations equally, and this legislation will move toward an analysis which will permit the Federal Government to evaluate more accurately a lease versus a purchase of property.

Mr. LEVITAS. Let me pursue that just a little bit more, and I do not want to go too far afield into the tax policy aspects of this. We will be considering that. I, of course, favor increased Federal construction, increased Federal ownership for the benefits that it brings to the taxpayers. It is an overall savings to taxpayers. But I am not opposed to an appropriate mix between rental, leasing, on the one hand, and Federal ownership, on the other. I think there needs to be both in there, and there are many instances where leasing space is by far the most appropriate and indeed, cost-effective way to go.

Now, having said that, and realizing that I favor both time financing and other means that direct us into a more favorable mix between ownership and leasing, the question I have is, from the point of view of the lessor, is going after the depreciation, from his perspective, the most rational or sound or equitable way to go? I think it is a consideration that we ought to take into account, OMB, GSA, and the Congress, in deciding whether we lease or whether we build, based upon the economics of it, all things considered, including the depreciation or—and I really hate to use the word, but I will use it one more time—tax expenditures.

But leaving that aside, from the point of view of the developer, the builder, the building owner, he spends a certain amount of money to build a building, he arranges his mortgage, and then goes out to lease it. He can lease it either to private sector companies and take full advantage of whatever depreciation or credits are available or, if he decides to lease to a tax-exempt entity, including the Federal Government, as I understand it, there will be restrictions placed upon his depreciation.

Now, that does not skew the decision of the Federal Government, it seems to me; it skews the decision of the builder to decide:

> I don't want to lease to the Federal Government. If I lease to a private concern—and I am just a landlord; I do not care what kind of business they do in there, as long as it is legal—why should I be penalized because I am providing a lease to a tax-exempt entity?

I mean, even as one who favors the concept of more ownership and time financing, and so forth, I do not understand how this skews the Federal Government's decision. I think it skews the decision of the lessor.

Mr. **Pearlman**. Well, it may have that effect, but we do not think it will, Mr. Levitas. We think what is going to happen, in fact, is that the market will reflect the different depreciation rates, and we think that is desirable, even though it means that the rental rate will be affected. What will happen in that situation is, if I own a building, and my alternative is to lease it to a nongovernmental commercial enterprise or lease it to the Government, and I know my depreciation rate is going to be affected depending on which way I go, in order to accept that distinction, I am going to have to charge a different rental rate——

Mr. **Levitas**. Higher.

Mr. **Pearlman**. A higher rental rate.

Mr. **Levitas**. Which costs the Government.

Mr. **Pearlman**. Well, that is the problem. We think that is a fictitious higher cost. It is costing the Government today, but the cost is not fully reflected in the budget. In other words, when the Government enters into a tax-favored lease today, and the depreciation deductions flow through the tax system, it is costing the Federal Government.

Mr. **Levitas**. Believe me, I understand that, and I am glad we are finally facing that.

Mr. **Pearlman**. So we would suggest that——

Mr. **Levitas**. Let me tell you, Mr. Pearlman, what the problem is, OK? Now, I understand what you are saying. We are communicating here.

Mr. **Pearlman**. OK.

Mr. **Levitas**. But let me tell you one of the problems that I see. Let us take a market where rental space is relatively scarce—San Francisco, New York City, at times even Atlanta—and now you have a seller's market. And on the one hand, the lessor says, "Look, I can lease to a private sector and not have to worry about figuring out what my new per-square-foot rental is going to be, because I am going to have to jack it up if I am going to be renting to the Federal Government," on the one hand. On the other hand, the gentlemen of this Subcommittee now go and again explain to their constituents, "Yes, if this were a retail establishment, they would be paying $15 per square foot, but because it is the Federal Government, we have the advantage of paying $22 per square foot." Why shouldn't the Federal Government be able to lease at the same rate as the private sector? Why do we pay more? Why are the taxpayers being ripped off?

And then we give them the answer: Well, it is because of the tax policy of the United States, that says if you are going to lease to the Federal Government, you cannot depreciate the same way, so you have to make the same economic recovery up front.

Mr. **Shaw**. If the gentleman would yield, I also would like to make the further observation that it is going to probably push us into the older buildings that have already been depreciated.

Mr. **Pearlman**. Well, it seems to me that the judgment will be a market judgment. I mean, people will be quite prepared to lease to the Federal Government. But one would expect that the rental will be higher, and it is simply going to force the GSA or the agency making the rental decision to look at the full cost of occupancy of that property, whereas today, they simply do not do that. And I think the whole objective here is—I think the point Mr. Levitas makes, as to how do you explain that to the constituent who says, "Why is the Federal Government paying more?" is difficult. I acknowledge that, because it is difficult for the constituent to understand that there is another cost to the Federal lease, that is, the cost to the Treasury as a result of the tax benefits to the individual investor as a result of depreciation on that property.

Mr. **Shaw**. If the gentleman would yield further for a comment, I would like to make this observation, that for some of the Members of Congress, it is hard to understand that we are supposed to get the best value for the dollar, as the Federal Government, and that is going to make our job even tougher, and for this committee. There is a tremendous amount of rental property that is built every year in this country for the primary purpose of tax sheltering. We did not set those rules up on this committee. We had nothing to do with that, except as one vote in the entire Congress. But I do not see why the Federal government should be dealing with one set of rules, and the rest of the economy dealing with another, particularly when those are the comparisons that we in this committee have to make in coming up with a decent decision as to what is the best value for the Government.

Mr. **Pearlman**. Well, Mr. Shaw, let me quickly point out that while the reasons are different, this is not a rule that is directed solely to the Federal Government; the proposals that were reported out of the House Ways and Means Committee are applicable to all Government agencies and to all tax-exempt agencies. But the reason they were extended to the Federal Government is different. It was purely a budgeting reason. The reason that these proposals are being applied to other governmental entities and tax-exempt entities is because there is a major revenue loss that is occurring through the leasing of property to tax-exempt entities. Indeed, in the mid-session review of the receipt side of the budget this year, there was a $2 billion reduction in receipts as a result of the unanticipated growth in leasing to governmental and tax-exempt entities.

So it is not a provision that is directed in the proposed legislation just to the Federal Government. Any tax-exempt entity and every governmental unit in the United States, with some minor exceptions, will be subject to these same rules.

I would suggest that in analyzing whether, when you are looking at a piece of property for the Government to lease, you are making the best deal for the Federal Government, you have simply got to use a system which forces the Federal Government to look at the tax expenditure side of the lease. And certainly, if you had an accounting system and, more importantly, people negotiating leases who recognize that—that is, if you had the fellow out on the front line who is negotiating a lease with the owner of a piece of property, and he understood the tax expenditure side and said:

> Hey, wait a minute. The lessor is getting some benefit from the Federal Government because of 15-year ACRS depreciation, and therefore, the Federal Government is going to pay the lessor a lower rent than he can get on the market.

If you have someone out there who understands that concept and can negotiate with that kind of effectiveness, then certainly you could achieve the objective that this bill is trying to achieve in a different way. I think people, at least on our side oi the street, the people at OMB and others, suspect that at least in the short term, that is probably not the case, and what you are really doing is paying market rent for property, and in addition to that, providing for an additional cost through the depreciation benefits that are passed through to the individual investor. The bill is designed to force an accurate evaluation by the Federal Government of the cost of leasing a piece of property. It is so easy for all of us, even those of us who live with the tax system every day, to ignore the fact that there is another cost in leasing property; that is, the savings that pass to the owner of that property through the tax system.

Mr. LEVITAS. Well, let me say this, Mr. Pearlman. I am very pleased we have made this record today. I think it is quite important. I for one, and I know other members of this committee, have been aware of this aspect for quite some time, and essentially, we have been dealing with that part of OMB that does not want to look at these costs, whether they are tax expenditures, if you will pardon the expression, or they are annualizing the rental costs rather than reflecting the total cost, the same way we do in construction. So I am very pleased, because I think it will probably force OMB for the first time, through the back door, to make judgments based upon total economic cost to the Government.

On the other hand, I will also tell you when they start looking at the comparative rentals that are going to be paid by GSA—GSA has its own little budget over here, and other people have their budgets over there, and the SLUC fund will reflect it all throughout the bureaucracy—when that begins to happen, there are going to be some very interesting situations, because that means you are going to have to increase appropriations to each of the agencies as well as GSA in order to compensate for the high rentals, and I gather there is no press here today, so the message is not going to get out to the Red Cross and the United Appeal and all of the other agencies that their rent is going to go up, too, and so therefore they are going to have to increase their campaign budgets next year for muscular dystrophy or cystic fibrosis or you name it, in order to compensate for the additional rent they are going to be paying in order to offset the loss of depreciation.

Mr. PEARLMAN. They are aware, I can assure you. But I should emphasize again, at least when we get away from the Federal Government, we have a very serious deficit problem with this aspect of the tax rules. We are alarmed at the amount of revenue that is escaping tax because of the expanding technique of leasing property to tax-exempt organizations. You may have seen some of the publicity over the past several months of colleges leasing their campuses and cities leasing their city halls, and so forth. It is a serious budget issue, and that is why the other portion of the bill, which does not deal with the Federal Government, has been viewed by members of the Ways and Means Committee, as well as by the administration, as an important piece of legislation.

Mr. LEVITAS. Thank you. Most interesting.

Mr. YOUNG. The final question, Ms. Beebe. As you know, your agency has annually assessed the standard level user charge by the GSA for the space your agency occupies. This system has been in place since 1975. Could you express your thoughts on, first, paying the standard level user charge for the space; the level of security provided by GSA, and the condition of the facilities you are occupying? Are the buildings being repaired in a satisfactory fashion and in a timely fashion, and is the security adequate, in your opinion?

Ms. **Beebe**. Mr. Chairman, concerning the use of the SLUC charge, we do not oppose that method of financing. Our interest is in assuring that our buildings are maintained; whatever the most efficient way is to do it, then we would be in favor of that. I continue to be very concerned that the amount of funds available for maintaining GSA lease space is not adequate. And indeed, I have testified before other committees about problems with space occupied by the Treasury Department.

One thing in your bill that will help us significantly is raising the prospectus amount. We have a significant amount of buildings that are waiting for approval of a prospectus for repair. One of them, you may drive by frequently as you go across the 14th Street Bridge. We call it the Liberty Loan Building. The building is in such a disastrous state that we have put scaffolding up to prevent the glass from falling out of the windows on people. The outside of the building is cracking, and during the last inspection I made of it, I went into a room and found an acetylene torch tank without a cap on it, open paint cans from GSA painters, and right outside the room was major wiring for the building, and an electrical box did not have a cover on it.

Mr. **Levitas**. Excuse me, Mr. Chairman.

Ms. Beebe, any time you start feeling real bad about Treasury and you want to feel a little better, go down to the Waterside Mall, and look at the Environmental Protection Agency building, particularly after a rain. It is amphibious warfare down there.

Ms. **Beebe**. I have been there. I live in Southwest, and any day you want to change my Liberty Loan Building for anything in Southwest, we would be pleased to do so.

It is a general problem that funds are not available for repairs. GSA does try to work with us cooperatively, but I do not feel that many of our buildings are in adequate condition.

With regard to the issue of security, in most facilities, we find that it is adequate. However, in the Internal Service, in a number of places, we have found that it is inadequate. We have tried to address this problem with GSA's recent change in policy. We have made some progress, but security does, in a number of buildings, continue to be a problem for us.

Mr. **Young**. I assume you are located in a number of Federal courthouses throughout the country.

Ms. **Beebe**. We are. We have some 2,000 locations across the country. We have about 30 or 35, I believe, here in the D.C. area. My own offices just for administration are in eight different buildings.

Mr. **Young**. You are in the courthouse in St. Louis, aren't you?

Ms. **Beebe**. Yes

Mr. **Young**. I see Mr. Pearlman shook his head real fast to that question.

Mr. **Pearlman**. I spend a lot of time there.

Mr. **Young**. Well, I have no further questions, and we thank you very much, Ms. Beebe, for your appearance here today.

Ms. **Beebe**. Thank you.

[Subsequent to the hearing, additional questions were forwarded to Assistant Secretary Beebe by Representative E. Clay Shaw, Jr. The questions and responses follow:]

Department of the Treasury,
Washington, D.C., December 12, 1983.

Hon. E. Clay Shaw, Jr.,
Ranking Minority Member, Public Buildings and Grounds Subcommittee, Committee on Public Works and Transportation, House of Representatives, Washington, D.C.

Dear Mr. Shaw: I am pleased to respond to your letter to Assistant Secretary Cora Beebe of November 9, 1983, which contained written questions following the Department of Treasury's participation in the Public Buildings and Grounds Subcommittee hearings.

Please find enclosed the Department's responses to these inquiries.

Sincerely,

W. Dennis Thomas,
Assistant Secretary (Legislative Affairs).

Enclosure.

Questions for the Department of the Treasury

1. Can you tell us to what extent time financing is currently used within the Government to finance new construction? For example, to what degree is it utilized by independent agencies or Departments such as T.V.A.?

Answer. The attached copy of Table IV, Schedule C from the Final Monthly Treasury Statement of Receipts and Outlays of the United States Government for fiscal year 1983 lists agencies and programs with outstanding borrowings from the Treasury and the Federal Financing Bank. As indicated in the Table, as of September 30, 1983, outstanding borrowings from the Treasury amounted to $198.6 billion and outstanding borrowings from the Federal Financing Bank amounted to $29.1 billion.

2. What would the advantages or disadvantages be of issuing obligations as permitted by the time financing provision of H.R. 630 to the Federal Financing Bank instead of the Treasury?

Answer. The interest rate on borrowing from the Treasury would be determined taking into consideration prevailing yields on marketable Treasury securities with comparable maturities. The FFB rate would be set at ⅛ of one percentage point above the prevailing Treasury market yield. Thus, there would be an interest saving from borrowing from the Treasury that could be passed on to users of the buildings, and their budget outlays could be reduced accordingly.

3. If G.S.A. were given the authority to issue bonds to the Treasury to finance new construction, what type of repayment method do you feel would be most appropriate, i.e., annual interest payments with principal due when the bond matures or annual principal and interest payments?

Answer. The Department generally recommends that loans to finance construction be amortized with periodic payments of principal and interest over the life of the loan and that the maturity of the loan be less than the useful life of the asset being financed.

4. What indirect tax benefits accrue to a city by the presence of the Federal Government in a Government owned building? Do you feel these benefits would outweigh the city's loss in terms of the Federal Government's exemption from property taxes?

Answer. Numerous attempts to measure the fiscal impacts of Federally owned facilities have been made—particularly the impacts of military installations on local economies. Indirect tax benefits include increased sales taxes, propety taxes, income taxes and other taxes on wages and salaries, and fees. In any case, generalization of such estimates would founder on the fact that State/local tax structures vary dramatically from jurisdiction to jurisdiction. One indication of the "value" assigned by local governments to such facilities is the common reaction to the suggestion that such facilities be terminated or transferred. The almost universally negative reaction to such proposals is testament to the perceived benefits (over costs) of the presence of Federal facilities.

9. As a matter of public policy, do you support the provision which would permit time financing of the construction costs for new public buildings?

Answer. As Assistant Secretary Beebe stated at the hearing, the Office of Management and Budget is considering from an overall policy point of view whether or not such authority should be granted to GSA.

Attachment.

TABLE IV--SCHEDULE C (MEMORANDUM)--AGENCY BORROWING FINANCED THROUGH ISSUE OF PUBLIC DEBT SECURITIES (in millions)

Classification	Transactions			Account Balances Current Fiscal Year		
	This Month	Fiscal Year to Date		Beginning of		Close of This Month
		This Year	Comparable Prior Year	This Year	This Month	
Borrowing from the Treasury:						
Commodity Credit Corporation	$812	$2,800	$4,424	$18,609	$20,595	$21,407
Commerce, Fishing Vessels NOAA	1	7	2	2	8	9
Export-Import Bank of United States	....	-4	-15	4	....	....
Federal Emergency Management Agency:						
National Insurance Development Fund	....	20	20	30	50	50
National flood insurance fund	....	50	-257	....	50	50
Federal Financing Bank	1,576	11,725	17,048	124,357	134,506	136,082
Federal Housing Administration:						
General insurance	-87	-87	-80	2,098	2,098	2,011
Special risk insurance	....	10	55	2,014	2,024	2,024
General Services Administration:						
Pennsylvania Avenue Development Corporation	....	-1	5	57	56	56
Government National Mortgage Association						
Emergency home purchase assistance fund	-16	-21	-43	2,286	2,281	2,265
Special assistance functions	34	1,072	1,776	7,744	8,782	8,816
Rural Communication Development Fund	....	7	4	7	14	14
Rural Electrification Administration	-52	....	....	7,865	7,917	7,865
Rural Telephone Bank	....	42	55	679	721	721
Saint Lawrence Seaway Development Corporation[1]	....	-110	-1	110	....	....
Secretary of Agriculture, Farmers Home Administration:						
Rural housing insurance fund	65	280	5	2,341	2,556	2,621
Agricultural credit insurance fund	25	550	25	2,375	2,900	2,925
Rural development insurance fund	30	290	160	1,085	1,345	1,375
Secretary of Education:						
College housing loans	....	....	....	2,607	2,607	2,607
Secretary of Energy:						
Bonneville Power Administration	165	255	210	910	1,000	1,165
Secretary of Housing and Urban Development:						
Housing for the Elderly and Handicapped	30	881	735	2,830	3,681	3,711
Low-Rent Public Housing	....	....	-25	....	....	....
New communities guaranty:						
Title IV	....	....	....	8	8	8
Title VII	1	27	17	349	375	376
Urban renewal fund	....	-50	-150	50	....	....
Secretary of the Interior:						
Bureau of Mines, helium fund	....	....	....	252	252	252
Secretary of Transportation:						
Aircraft Purchase Loan Guarantee Program	70	70	....	....	....	70
Railroad Revitalization and Improvement	....	-10	-14	11	1	1
Rail Service Assistance	....	....	5	6	6	6
Regional Rail Reorganization	....	68	161	195	263	263
Small Business Administration, Disaster Loan Fund	....	-325	....	325	....	....
Smithsonian Institution:						
John F. Kennedy Center parking facilities	....	....	....	20	20	20
Tennessee Valley Authority	....	....	....	150	150	150
United States Information Agency	....	....	....	....	....	....
Veterans Administration:						
Veterans direct loan program	....	....	....	1,730	1,730	1,730
Total Agency Borrowing from the Treasury Financed through Issues of Public Debt Securities	*2,693*	*17,394*	*24,862*	*181,245*	*195,946*	*198,639*
Borrowing from the Federal Financing Bank:						
Export-Import Bank of the United States	180	702	1,346	23,984	24,480	24,676
National Credit Union Administration	....	-86	31	130	44	44
Postal Service	....	-67	-67	1,221	1,154	1,154
Tennessee Valley Authority	165	850	1,611	12,265	12,950	13,115
U. S. Railway Association	....	-40	-31	165	125	125
Total Borrowing from the Federal Financing Bank	*340*	*1,331*	*2,890*	*37,783*	*38,766*	*39,114*

Note: Includes only amounts loaned to Federal Agencies in lieu of Agency Debt issuance and excludes Federal Financing Bank purchase of loans made or guaranteed by Federal Agencies. The Federal Financing Bank borrows from Treasury and issues its own securities and in turn may loan these funds to Agencies in lieu of Agencies borrowing directly through Treasury or issuing their own securities.

See footnotes on page 3.

5. In terms of tax liability, could you review for us some questions that arise regarding the question of ownership of the property for which an option has been purchased?

A: Yes. The answers to individual questions follow.

6. Is ownership defined by law or by I.R.S. ruling?

A: In the case of a lease of real property, the lessor is generally treated as the owner of the property for federal income tax purposes. Where the lessee has an option to purchase the property, the lessee may under certain circumstances be treated as the owner of the property for tax purposes. Whether the lessee is to be so treated is a question of fact, to be determined under published Internal Revenue Service rulings and the case law. The Internal Revenue Service will not normally issue a private ruling on this question, as on most factual questions.

7. How does the amount which is paid for an option on a piece of property affect the question of ownership?

A: The option price is one factor to be taken into account in determining whether the transaction is truly a lease or is in effect a conditional sale. This determination is explained in the answer to question 8 below.

8. How does the manner in which an option is acquired, that is as part of a lease payment or as a separate payment, affect the tax liability of the parties involved?

A: The determination is essentially whether the transaction is a bona fide lease with an option to purchase at the end of the lease term, or is in effect a conditional sale to the lessee. Where the rental payments represent a fair market rent and where the option price represents an estimate of the fair market value of the property upon the expiration of the lease term, the characterization of the transaction as a lease will generally be honored. Where, however, the rental payments exceed a fair market rent, and where the option price is far below fair market value, so that under the circumstances it is virtually certain that the lessee will exercise the purchase option, the transaction will generally be treated as a conditional sale. If the option price is reduced by the rental payments, this will be a factor tending to characterize the transaction as a conditional sale, although it will not necessarily be so treated.

Where the lessor is treated as the owner, the lessor may claim accelerated cost recovery deductions and any available investment credit (such as the credit for rehabilitation expenditures) with respect to the property. By the same token, the rental payments are includable in the lessor's income. In the case of certain leases to the United States, the investment credit may be denied and cost recovery may be delayed under pending legislation (the Tax Reform Act of 1983). In this case, the lessor will be treated as selling the property to the lessee, and will not be entitled to cost recovery deductions.

QUESTION

To what extent do you feel you would be affected by the provision of H.R. 630 which requires that when locating an agency preference be given to the central business district of a city?

ANSWER

It is our belief that carrying out the Treasury Department's mission should always be given the greatest emphasis in any decision to locate an office. We also agree that the Federal government should, when appropriate, support the needs of the cities to encourage development in certain areas by locating offices in concert with the cities' plans, so long as those locations do not prevent the agencies from achieving the best possible degree of efficiency, as well as accessibility to any population being served.

It has been our experience that provisions such as the emphasis on central business district locations can be interpreted and implemented inconsistently, especially when there are additional considerations involved. Further, this can create problems in locating or relocating offices. To illustrate, locating an IRS taxpayer service office from a suburb to a downtown area to comply with policies regarding favoring central business district locations, would result in placing the office in a location many miles from the population intended to be served. In this case, the suburban location is required for ease of access to the suburban population.

We believe that many considerations need to be weighed in deciding the location of a Federal office, but all of those considerations must be viewed from the initial perspective of the Federal agency's mission and the specific function being accomplished by an office. To require primary emphasis on any other factor will result in inefficiency and a poorer opportunity to serve the public well.

QUESTION

In terms of future space requirements, what kind of planning and on what time frame are future needs of the Department defined and is this information shared with GSA?

ANSWER

Prior to 1982, we regularly contributed to the GSA's compilation of agency space projections, which was provided to the President and the Congress. Beginning last year, we were invited to contribute directly to GSA's 5-year space plan concurrently with the budget submission. Also, the current high level of interest in space reduction initiatives has generated another avenue for our communication to GSA of our space needs in the form of projections for each specific location we are in. We now have the opportunity to review and improve our space utilization in each of those locations, and to record our intentions in reports to GSA. Thus, we believe our communications with GSA regarding long-range planning for space are occurring with greater frequency and accuracy than ever before, and we and GSA are both benefiting from this exchange.

We must also point out that the nature of our mission frequently entails changes in our space needs which cannot always be forseen, particularly in the area of law enforcement. When we find it necessary to initiate specific unusual programs, we initiate immediate and thorough discussions with GSA to clarify our needs. This happens because the vast majority of our offices are located in GSA-managed space, and we must necessarily rely on GSA to fulfill our space needs. Also, GSA is usually quite helpful in meeting our needs, and in many cases we can assist GSA by using vacant available space already in GSA's inventory.

Overall, we believe our communications with GSA are excellent, and long-range planning is taking place to the maximum extent possible.

Mr. YOUNG. The last two witnesses we have are a panel—Mr. Charles F. Feldewert and Mr. John E. Akridge III. Mr. Feldewert, I understand, is from St. Louis, and Mr. Akridge is from Washington, D.C.

I assume you gentlemen have worked out who will go first.

The full text of your prepared statements will appear in the record at this point.

[Statements referred to follow:]

TESTIMONY OF THE
APARTMENT AND OFFICE BUILDING ASSOCIATION OF WASHINGTON, D.C.

BEFORE THE
SUBCOMMITTEE ON PUBLIC BUILDINGS AND GROUNDS
HOUSE PUBLIC WORKS AND TRANSPORTATION COMMITTEE
ON
THE PUBLIC BUILDINGS ACT AMENDMENT OF 1983
H.R. 630

Presented By

John E. Akridge, III
President
The John Akridge Company

October 27, 1983

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I. INTRODUCTION

I am John E. Akridge, III, President of the John Akridge Company, a real estate development and construction firm based in Washington, D.C. I am testifying on behalf of the Apartment and Office Building Association of Washington, D.C.

AOBA is interested in a number of specific issues raised by the Public Buildings Act bills pending in both houses of Congress. These issues include the outleasing of space in Federal buildings and restrictions on the location of Federal office space in the Washington, D.C. metropolitan area. These issues are discussed in my written testimony statement submitted to the Subcommittee.

We believe that there are three factors which should be considered in evaluating the alternative methods of providing office space: cost, flexibility, and accountability. An examination of these factors shows that leasing is likely to have substantial advantages over Federal construction and that leasing will often be more advantageous than acquisition as well.

II. RELATIVE ADVANTAGES AND DISADVANTAGES OF LEASING AND FEDERAL CONSTRUCTION

When leasing is compared to Federal construction of real property, all of the benefits of leasing over acquisition apply and there are additional substantial benefits of leasing as well.

A. Comparative Study of the Cost of Federally and Privately Constructed Office Buildings

The cost of building government office space is significantly greater than the cost of building equivalent private office space. In 1976, the Office of Management and Budget requested the General Services Administration to undertake a comparative study to establish the magnitude of the cost differentials between public and private building construction, and to explain the causes of such differences.[1]

This Study concluded that the average cost of the Federal buildings examined exceeded the average cost of the private buildings examined by 55 percent and exceed the cost of owner-occupied private space, which is the highest quality privately-owned space, by 35 percent.[2] The cost differences were attributed to hardware, and configuration of the space were as follows:

o Thirty-nine percent of the overall differential was attributed to scope differences between the two groups of buildings, i.e., the Federal buildings contained more items.

o Twenty-one percent of the difference was attributed to quantitative variances, i.e., variations in the way the building spaces and volumes are put together. Federal buildings generally had lower floor area efficiency ratios and volume ratios (more of the gross area of the building was not usable for office space, and the floor to floor heights were greater).

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[1] Cost and Performance Study: A Comparison of Federally and Privately Constructed Office Buildings [hereinafter "Study"], by Hascomb Associates, July 1976.

[2] Study at 4.

- Thirty-one percent of the differential was attributed to qualitative differences, i.e., the quality of the materials used.

- Nine percent of the differential was attributed to unidentified causes.[3]

The Study also listed additional costs which Federal buildings would bear due to considerations other than building hardware and configuration.[4] These costs include:

1. Documentation and reporting requirements. There are many restrictive regulations which govern bidding documentation for Federal projects.

2. Procurement policies and standards. Extensive procurement rules, regulations, and required documentation, both at the individual agency and general federal level, are deemed necessary for adequate public accountability, and to demonstrate that facilities are being procured at the lowest possible price.

3. The ban on proprietary specifications. This results in Federal building specifications containing performance specifications which are lengthy and which lead to validation problems when specific products and systems are proposed by

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3/ Study at 4, 5, 88, 119, 120, 121.

4/ Study at 123-135.

bidders. The GAO has stated that this requirement results in higher costs on some items, such as windows, accoustical materials, hardware, roofing, plumbing, drains, waterproofing, piles, exterior facing, equipment, elevators and air conditioners.[5]

4. Selection of design consultants. This is a lengthy and complicated selection process, much like that for the selection of contractors. In addition, there is a tendency to "share the work" as much as possible, which may result in the selection of an "unknown quantity."

5. Time delays. There is a significant difference between the public and private sectors in the time it takes from the commencement of a building project to the start of construction. An extended period of time is required in the typical Federal building schedule for the approval process, which includes: funding authorizations, program approvals, conceptual design analysis, detail design analysis, procurement actions and the contract award. In addition, Federal projects often experience delays and consistently outstrip budget authorizations, with reauthorizations creating further delays and further costs in a process which feeds on and repeats itself.[6]

5/ Procedures and Assumptions Used in Making Present-Value Cost Comparisons For Alternative Methods of Acquiring Federal Buildings, General Accounting Office, LCD-75-345, November 4, 1975 [hereinafter "GAO Report"] at 9.

6/ Study at 131-132.

6. Cost control procedures. It is crucial to understand that there are fundamental differences between the objectives of building construction programs in the private and public sectors. The private sector builds for the purpose of making a return on an investment, whereas the Federal Government builds to satisfy a need for space for employees and programs.

Where matters of cost are concerned, it is not surprising that the Federal sector is at a comparative disadvantage to the private sector. The private developer has an incentive to make a profit, a powerful driving force in controlling and reducing costs. In the public sector, however, there is only a desire to supply space and, beyond that, to maintain an appropriate image.7/

As a result of this different perspective, budgets in the two sectors tend to be set with different objectives and views. There are far greater penalties to a private developer if his budgeted costs are exceeded, and conversely, greater benefits if they are less than estimated. In the Federal sector, there is a tendency to regard budgets as a minimum level of expenditures and to be resigned to the probability that they will be exceeded.8/

a. Management Control

In the private sector responsibility for cost control is usually retained by the developer or owner. While he may

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7/ Study at 134.

8/ Id.

utilize the services of a construction manager or architect/engineer to assist him with the mechanics of cost control, he still maintains full authority and responsibility for all expenditures. The Federal approach, on the other hand, involves an abdication of this responsibility by the Government, and the transfer of this authority to the designer or construction manager. With some exceptions, the design professions are not well-known for their cost control abilities. Further, it is a basic management principle that one does not give responsibility for cost control to the designers of products or to the production line; cost control remains a management prerogative. The private sector appears to recognize this by retaining this responsibility at the management level, whereas the Federal Government does not.9/

b. "Loading-Up"

As noted above, 39 percent of the cost differential between Federal and private buildings was attributed by the GSA Study to additional scope and 31 percent to additional quality.

Many of these differences may be explained not by any differences between the function of private and Government buildings, but by the lack of any real disincentive to the inclusion of items that would be nice to include, although not really necessary. Some of these items, as listed by the GAO, include extra lighting, extra security devices, emergency power sources, sprinkler systems and fire control systems, and fallout

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9/ See Study at 134-135.

shelters. According to GAO, these items add approximately $2.95 in 1975 dollars to the cost per square foot. Another item is the exterior treatment of the building, which usually surpasses in quality that which is used on commercial structures, and which can add from $1 to $5 per gross square foot in 1975 dollars.[10/]

A further item adding to costs is esthetic design. GSA's basic policy for the design of federally constructed office buildings emphasizes excellence of architecture and design. A GSA survey cited in the GAO Report estimated that interior design under GSA's interior plan and design program adds about $.67-.70 per gross square foot in 1975 dollars and that fine arts costs are applied at the rate of .5 percent of the estimated construction cost.[11/]

7. Statutory requirements. A number of Federal statutory requirements such as the Davis-Bacon Act, the Buy American Act, and small business set-asides, also add to the costs of Federal construction.

B. Congressional Budget Office Study

A recently issued CBO study of the Federal buildings program has endorsed this conclusion by stating:

> "Relative to private construction, the higher costs of federal construction result both from a lack of market incentives and from special requirements, many set in law, for construction of federal buildings."[12/]

[10/] GAO Report at 10.

[11/] *Id.* at 11.

[12/] Congressional Budget Office, "The Federal Buildings Program: Authorization and Budgetary Alternatives," June 1983 at 56.

III. RELATIVE ADVANTAGES AND DISADVANTAGES OF LEASING AND ACQUISITION

A. Cost

The potential cost differences between the acquisition of an existing building and leasing are the costs of purchasing, reselling, financing, and operating the building. We believe that private sector lessors will generally be at least as cost-effective as GSA regarding each of these costs.

1. Purchase and Resale

A private lessor will have an advantage over GSA in purchasing and reselling a building if it is more experienced in the purchase and sale of commercial real estate and more knowledgeable about the relevant real estate market. This will often be the case because many lessors to the Government buy, sell, and develop many more office buildings than does GSA. In addition, firms which specialize in the management, leasing and development of office space in an area may be more knowledgeable than GSA about the opportunities and problems of the local real estate market.

Of course, if the building definately will not be resold, there can be no cost advantage in resale for either alternative. In addition, GSA employees can be expected to have varying amounts of experience in real estate acquisition and knowledge of the local market. On balance, however, we believe it is more likely that private sector real estate specialists will have an advantage over GSA in purchasing and selling buildings at the best price and with the lowest transaction costs.

2. Building Operation

A private lessor will often have an cost and effectiveness advantage in building operation, including management and maintenance services. For example, a 1981 study by the General Accounting Office concluded that the cost to GSA of cleaning Government buildings with GSA employees was approximately double the cost incurred by private lessors and was one and one-half times more than when it contracted out the cleaning service. We believe that private sector lessors, subject to the rigors of the free market, will often have the skills and the desire to provide quality building maintenance services at a lower cost than GSA.

3. Financing

The question of the relative costs of financing is somewhat more complicated because it also involves the issue of flexibility. However, an examination of this question shows that the financing cost should either be the same for leasing or acquisition, and if greater for leasing, that the difference is caused by a corresponding additional benefit to the Government.

GSA leases and Treasury bonds are both obligations of the Federal Government. If the period of the lease is the same as the maturity of the Treasury bond, we believe that investors see them as equally secure investments. Both obligations are backed by the Government, one directly and one indirectly. If a lessor issues bonds to finance the acquisition of a building to be leased to GSA, the purchaser of the lessor's bonds issued to finance this project will demand a slightly higher interest rate than the purchaser of Treasury bonds. To account for risks such as casualty loss to the building and deterioration of the neighborhood which the Government would bear if it owned the building.

However, GSA leases are not for durations equal to the maturities of long-term Treasury bonds. One typical GSA lease arrangement has a base term of 5 years with an option for the Government to extend the lease for one or more additional 5 year terms at the same price. Other GSA lease arrangements have longer terms but contain an option for the Government to cancel the lease after 2 or 5 years.

Such lease arrangements provide the Government with valuable flexibility not available in acquired space. After 5 years, if the size or mission of the agency changes and the space no longer meets its needs, GSA can refuse to exercise its renewal option, or can exercise its cancellation option, and find other space. In addition, if the price of leasing falls, as it has dramatically in the past 3 years, then when its option may be exercised GSA can refuse to continue the lease under the original rental price and negotiate for a lower price, or it can vacate the premises and find other, less expensive space.

Therefore, to the extent that observed rates of interest paid by private lessors exceed the long-term Treasury bond rate, this difference is due to increased risks of the lessee and because GSA lease obligations have a shorter term and, therefore, less certainty of return than do long-term Treasury obligations. However, this increased financing cost is the price the Government pays for reducing its risks and for the increased flexibility often necessary to meet changing agency space needs and market opportunities.

4. Conclusion

This evaluation of the comparative costs of leasing and acquisition shows that the costs of a lessor for purchase, resale, and building operations will often be lower than the costs resulting from acquisition by GSA. Where the financing costs are higher, the higher costs are probably compensation for the additional Government benefit of leasing over acquisition--flexibility.

B. Flexibility

It is indisputable that owned property is less flexibly adaptable to the needs of an organization than is leased property. Private organizations increasingly are finding that the flexibility benefits of leasing space, even for a corporate headquarters, are greater than the benefits of owning office space. The ability to lease space on a short- or intermediate-term basis to respond to needed organizational restructuring or expansion is recognized as a means of reducing the hidden cost of excessive personnel movement.

Private organizations which do purchase office space typically purchase enough space to accommodate their projected needs over a very long time period and then lease the space not presently needed to other office space users. Should the Federal

Government purchase buildings able to meet its future needs, it will be forced to either warehouse or lease out the excess space. This is something that the Federal Government cannot and should not do.

Warehousing is extremely expensive and wasteful, and would increase substantially the cost of the Government construction program. An extensive program of leasing to the private sector by the Federal Government would require sophistication and experience in the private leasing market and the flexibility and freedom to make quick decisions involving substantial sums. These qualities and conditions are not likely to exist in a Government program, and there would be possibilities of error and abuse.

In addition, such a program would be a massive intrusion into the private office space market, and would put a Government-subsidized leasing program, financed through tax revenues, in direct competition with private, taxpaying business.

The Federal Government achieves the flexibility it needs by leasing space in a building with other tenants which generally have shorter-term leases. The number of office moves, organizational changes, lease changes and terminations of Federal agencies in privately owned buildings indicates the need for flexibility that only leasing can provide.

This conclusion has recently been endorsed by the CBO Study which stated:

> "[L]easing of commercial facilities provides flexibility that may be especially important when

> implementing decisions to reduce the government-wide requirements for federal space."[13]

It is important to realize that after leasing office space for a number of years the Federal Government has much more than rent receipts. It also has the accumulated benefits of a reduced interest charge for that period. When the Government leases space, it does not have a building when the lease term ends (unless it has an option to buy), but neither is it stuck with a building which is no longer of adequate quality, which may no longer be needed because of changed agency requirements, or which is no longer properly located for use by the public.

C. Budget Accountability

Another benefit of leasing over acquisition is that it provides additional budgetary accountability. When an agency acquires an asset, its budget reflects the cost of the purchase, but it does not reflect the cost of the interest which will be paid on the additional Treasury debt necessary to finance the purchase. This has the effect of shifting part of the cost of the agency's acquisition of an asset from the agency's budget to the Treasury's interest account. Leasing, on the other hand, attributes the cost of financing to the cost of acquisition of the asset because the lease payments charged to the agency's budget include the financing costs.

13/ *Id*. at 57.

IV. OUT-LEASING

Another issue of concern to the building industry is the open-ended waiver of the 10 percent out-leasing limit. H.R. 7579, which was before the Subcommittee in 1980, codified the 10 percent limit set by GSA and OMB. H.R. 1938, before the Subcommittee in 1981, and H.R. 630, before the Subcommittee this year, codify the 10 percent limit, but also permit GSA to waive the 10 percent limitation where the administrator determines it is in the public interest, and where the House and Senate Committees do not disapprove such action.

We continue to support the codification of the 10 percent limit on out-leased space. This limit is needed to prevent unfair competition between the Federal Government and private lessors.

However, we oppose the waiver section as provided for in this bill. We believe that such broad waiver authority is unnecessary and that its "public interest" standard provides no real guidance to GSA for the use of such waivers. This open-ended waiver provision would make the 10 percent limitation on out-leasing almost meaningless. Accordingly, we propose that the Committee delete section 6(b).

In the alternative, if the Committee determines that some waiver provision is absolutely necessary for the proper functioning of the out-lease program, the provision should be modified in two ways. First, the Committee should restrict the circumstances under which such waivers may be granted to restored historical buildings or buildings where the nature of the pedestrian access areas strongly lends itself to additional outlease space.

Second, rather than allowing GSA to make such a waiver unless it is disapproved by one of the authorizing Committees, we believe that at least one of the authorizing Committees should be required to affirmatively approve such a waiver before it is permitted. We believe strong congressional oversight in the area is necessary to prevent unfair competition between subleased Government space and private space, and to prevent the warehousing of unnecessary space by GSA.

V. LOCATION OF OFFICE SPACE OUTSIDE OF WASHINGTON, D.C.

Another area of concern is section 10 of this bill, which prohibits GSA from constructing, purchasing, leasing, or otherwise acquiring any office space in the Washington metropolitan area unless GSA has first given full consideration to the possibility of providing such space outside of this area.

We appreciate the desirability of decentralizing the Federal Government. However, we believe that this provision could work against the interests of economy and flexibility in providing Federal office space. In addition, this provision could severely disrupt the office space market in the D.C. metropolitan area.

VI. CONCLUSION

In conclusion, leasing can, and often does, provide substantial benefits over acquisition and Federal construction as a means of providing the Government with needed real property. In every category of costs, the advantages of leasing should meet or exceed the advantages of ownership. However, we do not believe that leasing is always the most advantageous method of providing space for the Government. Where the supply of office space exceeds the demand for space, where that excess supply has resulted in opportunities for economical acquisition, or where construction costs are very low relative to rental rates, acquisition or construction may be more advantageous to the Government. These factors may be expected to change over time and from place to place. Generally, however, we believe that leasing offers significant advantages to the Government and that the ability of the private sector to lease space to the Government should be viewed as a substantial benefit.

TESTIMONY OF THE
BUILDING OWNERS AND MANAGERS ASSOCIATION INTERNATIONAL

BEFORE THE

SUBCOMMITTEE ON PUBLIC BUILDINGS AND GROUNDS

HOUSE PUBLIC WORKS AND TRANSPORTATION COMMITTEE

ON

THE PUBLIC BUILDINGS ACT AMENDMENT OF 1983

H.R. 630

Presented By

Charles F. Feldewert
President, Financial Services Group
Turley Martin Company

October 27, 1983

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SUMMARY OF TESTIMONY

BOMA believes that the public buildings policy of the United States should be to provide needed space through construction, acquisition, or leasing according to whichever method will result in the lowest cost. The lowest cost method should be determined by comparing appropriately discounted incremental costs on a case-by-case basis. Such a determination is required by the Office of Management and Budget and has recently been endorsed by the Congressional Budget Office.

An exception to this "lowest cost" rule should be made for headquarters and monumental buildings, which should be owned even if leasing would be less expensive. Another exception should be made for space needed for short or indefinite durations or which otherwise requires more flexibility than usual. Such space should be provided by leasing even if ownership would be less expensive. In all other cases, the lowest cost method should be used.

BOMA advocates this policy because it believes that the office building industry will very often be able to provide better space, at the right time, in the right place, and at a lower cost than GSA. BOMA advocates an unbiased system for determining the lowest cost alternative and urges the Subcommittee to guard against any effort by those who favor Government construction regardless of the cost to bias the analysis against leasing.

The first requirement for an accurate determination of , the comparative costs of leasing and ownership is the selection of an appropriate discount rate. The discount rate is used to reduce cash outlays in future years to their present value. The time value of money reduces the present value of future outlays in proportion to the amount of time in the future that the outlays occur. Construction and acquisition involve much higher outlays in the early years than later; leasing involves roughly equal outlays over the duration of the project. An inappropriately low discount rate would increase the calculated present value of outlays made in the later years and would, thereby, bias the decision against leasing.

Although there is wide agreement that the selection of a discount rate is important to the outcome of the cost comparison analysis, there is some disagreement about the conceptual basis for constructing the correct discount rate and about the specific discount rate which should be used.

We believe that the correct conceptual basis for determining the appropriate discount rate is the opportunity cost of capital in the private sector for similar investments and that the specific discount rate which should be used is at least the 7 percent rate currently prescribed by OMB.

The private sector opportunity cost approach for determining the appropriate discount rate was adopted by OMB in 1972. Based on this approach, OMB specified in Circular A-104 the use of a 7 percent discount rate, which represents the internal rate of return on private sector general purpose real property, exclusive of property taxes and expected inflation.

The opportunity cost approach and the 7 percent rate are amply supported by a report issued by the Subcommittee on Economy in Government of the Joint Economic Committee in 1968, by the testimony of the numerous Government and private sector economists before that Subcommittee in 1967 and 1968, and by prior and subsequent economic analyses.

The Subcommittee examined this subject in great detail because of concerns that artificially low discount rates were being used to justify uneconomic Government investments. The Subcommittee stated the following conclusions in its report.

First, the discount rate should be based on the opportunity cost of displaced private spending, not on the Government's borrowing cost. As the Subcommittee report stated, this is because "the Government is an arm of the society," not an independent organization which should seek to maximize its profit, and because its purpose should be to "sustain the private sector and not to exploit private citizens to achieve its own ends". The Congressional Budget Office recently issued a report which reached the same conclusion.

The CBO study concluded that "[t]he appropriate rate must discount the cost of capital actually experienced in the private sector, since this is the alternative use of resources, regardless of the option taken. Use of low Federal borrowing rates tends to encourage inefficient use of scarce capital."

CBO then constructed a discount rate based on Federal borrowing costs plus a risk factor. This rate is too low because real Federal borrowing rates over the period studied were abnormally low due to unanticipated high rates of inflation and because the risk factor used is too small.

Second, the appropriate method of determining the specific discount rate depends on whether explicit allowance is made for risk and uncertainty in the cost estimates. Where such allowances are not made, the opportunity cost of displaced private spending observed in the private capital markets should be accepted as the discount rate. The OMB Circular does not make explicit allowances in the cost estimates for risks and uncertainties such as faulty design, construction delays, and cost overruns.

Third, where the Government investment displaces a specific private sector investment, the rate of return in the sector of the economy from which the investment is displaced is an appropriate discount rate. It should be noted that in the last 30 years, over 100 Federal buildings have been constructed under two "purchase contract" programs authorized by Congress, whereby buildings were financed by private capital and constructed under lease-purchase agreements with GSA. These buildings were financed by private investors who either provided funds directly to the building developer or who purchased "participation certificates" for these buildings from the Government. In either case, it is clear that these investments directly preempted private investments in similar property.

These conclusions have been more recently supported by an American Enterprise Institute Study in Economic Policy and by other economic literature.

These conclusions are also supported by the office building industry which employs these principles in making similar real estate investment decisions. I regularly make decisions on whether to invest my company's resources and counsel our institutional clients on the purchase or development of proposed commercial real estate projects. I and others in the industry who make the present value cost comparison analysis currently require an internal rate of return of approximately 15 percent for purchases, and up to 20 percent for development projects, because of the higher risks involved. If these rates are adjusted for current rates of inflation, they would result in real discount rates in the range of 10 to 15 percent.

The second requirement for an accurate cost comparison is to include all relevant incremental costs, and only the relevant costs. We understand that the Administration is considering a proposal to include as a cost of leasing some portion of the depreciation deductions taken by a lessor to the Federal Government. It would be improper to include any part of the depreciations of lessors to the Government because the depreciation of real property is a fact which applies equally to all buildings: it is not a creation of the tax law. The many vacant and underutilized older buildings including many owned by the Federal Government, which are found in every major metropolitan area attest to this fact. Depreciation is a measure of the decline in value of an asset caused by wear, obsolescence, and other factors. Buildings depreciate whether they are owned by the Government or by the private sector. Therefore, depreciation is equally a cost of the Government's use of a building regardless of its ownership. The cost recovery period established by the tax code measures depreciation. Prior to the enactment of the Accelerated Cost Recovery System, depreciation deductions were based on a "facts and circumstances" test for determining the useful lives of assets and on the original cost of the asset. Because of the difficulty in determining the useful life of an asset and because inflation created a substantial difference between original and replacement costs of long-lived assets, Congress set a fixed 15 year cost recovery period for real property. Therefore, the ACRS cost recovery allowances represent the current best estimate of the depreciation of buildings owned by the Government and of buildings owned by private lessors to the Government.

In determining the appropriate discount rate and incremental costs of the various methods of providing needed space, it is important to be mindful that the impact of these decisions extends beyond the Federal Government. The cost comparison must be made on a sound economic basis to avoid reducing economic growth by misallocating our Nation's capital resources. If capital is inappropriately withdrawn from the private sector for the construction or acquisition of a Federal building, through either taxation or Federal borrowing, private sector economic development will be preempted, economic inefficiency will result and economic growth will be retarded.

In addition, uneconomic Federal ownership of real property undermines the tax bases of the cities. If the local real estate market is disrupted by Government overbuilding in an area where lease prices are already depressed by an oversupply of office space, property values and tax assessments may fall. In addition, whenever the Government owns rather than leases real property, the local tax base will be directly reduced by that amount of space unless payments-in-lieu-of-taxes are made to it.

Uneconomic Federal construction would also require additional Federal borrowing or taxation and thereby tend to increase interest rates. This would adversely affect the entire real estate industry because interest rates have a major impact on the level of construction activity.

As discussed earlier, we advocate a completely unbiased cost comparison method for determining whether to lease or own real property. However, in resolving any uncertainty you may have about the appropriate cost comparison method, a relevant long-established Federal policy should be considered. OMB circular A-76, issued in 1967 and most recently revised this year, states the Federal Government's policy regarding its performance of commercial activities.

This Circular states that "it has been and continues to be the general policy of the Government to rely on commercial sources to supply the products and services the Government needs." This policy recognizes that the "competitive enterprise system, characterized by individual freedom and initiative, is the primary source of national economic strength." This policy has also been recognized by the General Accounting Office. The justification for this policy succinctly states the reason that leasing is very often the best way of providing space to the Government and the reason that the office building industry believes it will continue to lease space to the Government as long as the cost comparison method is not biased against leasing.

I. INTRODUCTION

I am Charles F. Feldewert, President of the Financial Services Group of the Turley Martin Company, a real estate management, leasing, and development firm based in St. Louis, Missouri. I am a Certified Public Accountant and practiced with Peat, Marwick & Mitchell for 8 years before joining Turley Martin. Approximately 5 percent of the space operated by the Turley Martin Company is leased to the Federal Government.

I am speaking today on behalf of the Building Owners and Managers Association International (BOMA). BOMA is the trade association of the office building industry. BOMA's 5,000 members own or manage nearly 1 billion square feet of office space in over 70 cities. This legislation is of concern to the office building industry because of its potential impact on commercial real estate markets in areas where the Federal Government leases a substantial amount of space and on the real estate industry nationally. BOMA has testified to this Subcommittee on Public Buildings Act legislation in both the 96th and 97th Congresses.

II. LEASING POLICY

Mr. Akridge, testifying on behalf of the Apartment and Office Building Association of Washington D.C., the local BOMA affiliate organization, has just explained why leasing is often the best way to satisfy the space needs of the Federal Government. BOMA believes that the public buildings policy of the United States should be to provide needed space through construction, acquisition, or leasing according to whichever method will result in the lowest cost. The lowest cost method should be determined by comparing appropriately discounted incremental costs on a case-by-case basis. Such a determination is required by the Office of Management and Budget and has recently been endorsed by the Congressional Budget Office.

An exception to this "lowest cost" rule should be made for headquarters and monumental buildings, which should be owned even if leasing would be less expensive. Another exception should be made for space needed for short or indefinite durations or which otherwise requires more flexibility than usual. Such space should be satisfied by leasing even if ownership would be less expensive. In all other cases, the lowest cost method should be used.

BOMA advocates this policy because it believes that the office building industry will very often be able to provide better space, at the right time, in the right place, and at a lower cost than GSA. BOMA advocates an unbiased system for determining the lowest cost alternative and urges the Subcommittee to guard against any effort by those who favor government construction regardless of the cost to bias the analysis against leasing.

III. COST COMPARISON METHOD

A. Discount Rate

1. Introduction

The first requirement for an accurate determination of the comparative costs of leasing and ownership is the selection of an appropriate discount rate. The discount rate is used to reduce cash outlays in future years to their present value. The time value of money reduces the present value of future outlays in proportion to the amount of time in the future that the outlays occur. Construction and acquisition involve much higher outlays in the early years than later; leasing involves roughly equal outlays over the duration of the project. An inappropriately low discount rate would increase the calculated present value of outlays made in the later years and would thereby bias the decision against leasing.

Although there is wide agreement that the selection of a discount rate is important to the outcome of the cost comparison analysis, there is some disagreement about the conceptual basis for constructing the correct discount rate and about the specific discount rate which should be used.

We believe that the correct conceptual basis for determining the appropriate discount rate is the opportunity cost of capital in the private sector for similar investments and that the specific discount rate which should be used is at least the 7 percent rate currently prescribed by OMB.

2. OMB Cost Comparison Guideline

a. Methodology of OMB Circular A-104

In 1972, the Office of Management and Budget issued Circular No. A-104. This circular prescribes the use of a 7 percent discount rate to determine the present value of outlays made in future years for the leasing or construction of general purpose real property.[1/] This rate "represents an estimate of the internal rate of return on general purpose real property leased from the private sector, exclusive of property taxes and expected inflation."[2/]

This 7 percent discount rate is applied to the constant-dollar values of expected future outlays. These constant-dollar values are determined by applying a price deflator to expected future current-dollar outlays. The price deflator is based on the average inflation rate (as measured by the average change in the CPI over the number of years in the past equal to the number of years of the project's expected duration.[3/]

b. Justification for OMB Approach

The opportunity cost approach and the 7 percent discount rate adopted by OMB of Circular A 104 are amply supported by a report issued by the Subcommittee on Economy in

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[1/] OMB Circular No. A-104, p. 3, June 14, 1972.

[2/] *Id*.

[3/] *Id*. Attachment A.

Government of the Joint Economic Committee in 1968,[4/] by the testimony of numerous governmental private sector economists before that Subcommittee in 1967 and 1968,[5/] and by prior and subsequent economic analyses.

1) Report of the Subcommittee on Economy in Government of the Joint Economic Committee

The Subcommittee examined this subject in great detail because of concerns that artificially low discount rates were being used to justify uneconomic Government investments. The Subcommittee stated the following conclusions in its report. The purpose of the 1968 inquiry by the Subcommittee on economy in Government was to explore the feasibility of establishing a realistic discount rate and discounting procedure for evaluating Government expenditures to be used by all Federal Government agencies. The pertinent findings of the Subcommittee are as follows:

[4/] Economic Analysis of Public Investment Decisions: Interest Rate Policy and Discounting Analysis, (hereinafter "Report") 90th Cong., 2d Sess., A Report of the Subcommittee on Economy In Government of the Joint Economic Committee, September 23, 1968.

[5/] Hearings Before the Subcommittee on Economy In Government of the Joint Economic Committee, 90th Cong. 2d Sess., (hereinafter "Hearings"), September 14, 19, 20, 21, 1967; 91st Cong., 1st Sess., January 29, 1968; 91st Cong., 1st Sess., July 30, 31 and August 1, 1968.

a) Discount Rate Concept Should Be Based on Private Sector Opportunity Costs

The appropriate concept to be used as a basis for determining the Government discount rate is the opportunity cost of displaced private spending.[6] The Government discount rate should not be based on the Federal Government borrowing rate because:

> "Implicit in this position is the presumption that the Government is an independent organization which should seek the greatest differential between its revenues and outlays as does a private business.
>
> "The Subcommittee rejects this view of the Federal Government when it functions as an investor of capital....the Government is an arm of the society itself and should calculate so as to achieve the greatest difference between costs and benefits rather than to maximize its own net worth. The purpose of the Federal Government as an investor should be to sustain the private sector and not to exploit private citizens to achieve its own ends."[7]

b) Determination of Specific Discount Rate

The Subcommittee then concluded that having established as the conceptual basis for the public discount rate the use of private sector opportunity costs of capital, subsidiary issues remained in determining a specific discount rate.

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[6] Report at 1, 10, 12.

[7] Id. at 11, 12.

(1) the role of risk and uncertainty;

(2) the appropriate rate for public investments that displace specific private investments; and

(3) the treatment of inflationary influences on observed interest rates.8/

The Subcommittee noted that witnesses who testified in the Hearings distinguished between Government investments with no private sector counterpart and Government investments which displaced specific private sector investments. The Subcommittee suggested that where the Government investment had no counterpart in the private sector (such as new weapons systems), a minimum risk-free rate would be the yield on long-term Government securities. The risk of such a project would then be accounted for by:

(1) adjusting estimated cost-benefit streams by increasing costs and reducing benefits, with values calculated by weighing various higher costs and lower benefits by the probability of; or

(2) adding a risk factor to the risk-free Government borrowing.9/

However, where the Government investment displaced a specific private sector investment, the rate of return on the sector from which the investment is displaced would be an

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8/ *Id*. at 143.

9/ *Id*. at 14-15.

appropriate rate.[10/] The subcommittee noted that the estimation of the opportunity cost of displaced private investment by reference to realized private returns builds into the interest rate measurement an average allowance for risk and uncertainty present in the private sector.[11/]

As to the treatment of inflation, the subcommittee noted that this issue merited further study. Witnesses agreed that some adjustment for inflation should be made.[12/]

Accordingly, the subcommittee concluded as follows regarding a specific document rate:

> "If explicit allowance for risk and uncertainty is made in the estimates of benefits and costs, a minimum-risk base interest rate can be used for discounting. In this case, the average current yield on Government securities with long terms remaining to maturity is an appropriate minimum estimate of the opportunity cost of displaced private spending. This rate is currently about 5 percent."
>
> "If specific allowance for risk and uncertainty is not made in the benefit and cost estimates, an average allowance can be incorporated in the base interest rate. In this case, the opportunity cost of displaced private spending, as observed in the private capital markets, should be accepted as the base interest rate. As stated above, this rate is estimated as a weighted average of the observed rates of return over the private consumption and investment sectors. Depending on the system of weights adopted, this rate is currently in the 8-10 percent range."[13/]

[10/] Id. at 15.

[11/] Id. at 14.

[12/] Id. at 15.

[13/] Id. at 16.

The report also noted that some of the economists testifying before the subcommittee argued for rates in the 7 to 12 percent range.[14/]

2) Application of Subcommittee Report Findings

OMB's use of the rate of return on private sector general purpose real property as a basis for the prescribed discount rate is in accordance with the conclusions of the subcommittee's report because:

a. It is based on the opportunity cost of the displaced private sector investment of functionally identical property.

b. The displacement of private sector real property investment by Federal real property construction is demonstrated by the means used to finance a large number of the present stock of Federally owned buildings and a significant percentage of those built in the last 30 years. Under the "purchase contract" programs authorized by Congress in 1954 and in 1972, over 100 buildings were constructed for the Federal Government. These buildings were financed by private investors who either provided funds directly to the building contractors, or who purchased "participation certificates" issued by the Government. In either case, these buildings were financed by individuals desiring to invest in the precise type of real

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[14/] Id. at 13.

property required by the Federal Government, thus directly preempting other investments by these individuals in similar buildings for private sector use.

c. Since the cost estimates used in the present value analyses make no specific allowance for risk, the private sector opportunity rates of return (and not the risk-adjusted Federal borrowing rate) is appropriately used as a basis for the discount rate; and

d. These rates of return were determined to be in the 8 to 10 percent range at that time. The 7 percent rate prescribed in OMB Circular A-104 is based on the 10 percent rate prescribed in OMB Circular A-94 since 1969 and used to compare time-distributed costs and benefits of Government programs generally.

3) Testimony Supporting the Subcommittee's Conclusions

The subcommittee held extensive hearings on this subject: 4 days in 1967 and 4 days in 1968.[15/] In these hearings, 24 witnesses testified and statements were submitted by other persons. In addition, two days of hearings were held in 1969 on methods of estimating the benefits of Government expenditures which examined a concept parallel to the discount rate analysis.[16/]

[15/] See footnote 5.

[16/] Hearings before the Subcommittee on Economy in Government of the Joint Economic Committee, 91st Cong., 1st Sess., May 12 and 14, 1969.

The testimony of these witnesses is summarized in Attachment A to this statement. There was wide agreement in support of the conclusions stated by the Subcommittee in its report.

4) Other Analyses Supporting the OMB's Selection or a Percent Discount Rate

In March 1969, Jacob Stockfisch, the lead witness at the hearings, authored a research paper on this subject for the Institute for Defense Analysis which was based on an earlier paper sponsored by Resources for the Future.[17] This study proceeded from the position that the "rate-of-return, or capital cost measure, employed in the evaluation or costing of Government programs...should equal the before-tax rate of return generated by private, physical investment." He consulted that the yields of securities "especially Government debt yields--are most deficient as a measure of capital cost, particularly when viewed in the opportunity cost sense... because they express returns... after corporate and property taxes; and because they are claims against a combination of physical assets and cash holdings...." After determining rates of return in various sectors of the economy, he concluded that, after adjusting for inflation, "the 'real' opportunity rate of return is thus estimated to be 10.4 percent."[18]

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[17] Measuring the Opportunity Cost of Government Investment, Research Paper, p. 490.

[18] *Id*. at v, vi.

c. Subsequent Analysis Confirming the OMB-Prescribed Discount Rate

1) American Enterprise Institute

In 1977, the American Enterprise Institute published as one of its Studies in Economic Policy "The Rate of Discount for Evaluating Public Projects."[19/] This study surveyed the economic literature on the appropriate discount rate for public projects, including the testimony discussed above. The author noted the rejection of the Government's cost of borrowing as a discount rate, for "implicitly viewing the Government as though it were a profit-maximizing organization attempting to maximize its net worth apart from society as a whole" and the then recent arguments of Government personnel that the appropriate rate should "maximize the efficiency of the nation's total economic resources."[20/]

The study made the following general conclusions:

1. There is no collective private rate of time preference tending to establish a discount rate. At any point in time, each person has a different preferred pattern of savings and consumption. These continually changing patterns cannot be summed meaningfully to yield an observable collective rate of time preference.

19/ By Raymond F. Mikesell, W.E. Miner, professor of economics at the University of Oregon.

20/ Id. at 5.

2. The market rate of interest does not reflect the collective rate of time preference. Only changes in savings caused by interest rate changes would have this effect, and economists do not agree that saving is interest-elastic.

3. Since the collective private rate of time preference does not provide a basis for determining discount rates, the only observed rates for use as a guide in evaluating public projects is the rate of return on private capital, the opportunity cost of private capital.

4. There should not be a different discount rate for public projects financed by borrowing as opposed to taxation.

5. The argument that a lower discount rate should be used for public projects to transfer resources to future generations is indefensible, in part because it would promote uneconomic public investment and reduce private investment.

6. The discount rate should be based on the private sector opportunity cost of capital, specifically, the before-tax rate of return on projects in the same risk class. If there is no category of private investment comparable to the public sector investment, the rate of interest on long-term Government securities adjusted for the corporate income tax plus an allowance for risk would be appropriate.[21/]

[21/] *Id*. at 38-40.

The study further concluded specifically with regard to public projects with private counterparts that the discount rate should be the average cost of capital, including the cost for both equity (before taxes) and debt, appropriately weighted, for a project of the same risk class in the private sector. "The reasons for using the private rate of return as the opportunity cost of capital in projects similar to those in the private sector are (1) to prevent the public sector from transferring capital from higher-yielding to lower-yielding investments, and (2) to force public project evaluators to employ market standards in justifying projects."[22/]

For project without private counterparts, cost overruns would be one of the risks to be considered, with the risk premium added to the average rate on Government bonds ranging from 2 to 5 percent. The bond rate would also be increased by the average corporate tax rate on total returns to private capital investment, both equity and debt. The purpose of this approach is to derive a proxy for the opportunity cost of capital in the private sector.[23/]

2) Resources for the Future

In 1982, Resources for the Future published a compilation of papers on discount rate policy.[24/] Jacob Stockfisch, the lead witness in the hearings discussed above

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[22/] *Id*. at 42.

[23/] *Id*. at 43.

[24/] Discounting for Time and Risk in Energy Policy.

and now with the American Petroleum Institute, authored an article contained in the compilation.[25/] The article noted that there is no single, empirical counterpart of the theoretic concept of "the" rate of return and that it is unclear what is meant by the riskless Government borrowing rate except that the Government guarantees paying. The article concludes that a better measure of the discount rate is yields on private claims against physical assets, considering debt and equity issuance, cash holdings, and for taxes. The article then summarizes two empirical studies (one of which was the author's) which estimated the earnings and value of physical assets themselves and thereby derived a rate of return.[26/] Based on these two studies, private sector rates of return (the weighted average of corporate and noncorporate rates) were calculated from 1961 to 1971. These rates range from 8.4 percent to 14.2 percent.[27/]

3. Other OMB Policies

a. Policies Established by OMB Circular A-94

OMB Circular A-94 establishes the discount rates to be used in evaluating time-distributed costs and benefits.[28/] This Circular does not apply to water resource projects (covered by Water Resources Principles and Standards), real

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[25/] "Measuring the Social Rate of Return on Private Investment," id. at 257.

[26/] Id. at 266-67.

[27/] Id. at 269.

[28/] Issued March 27, 1972, revised.

property (covered by OMB Circular A-104), contractor services (covered by OMB Circular A-76), of computers (covered by OMB Bulletin 60-6).[29/]

Under this circular, the costs and benefits of all programs are estimated on a constant dollar basis and then discounted at a rate of 10 percent.[30/] The 10 percent rate "represents an estimate of the average rate of return on private investment before taxes and after inflation."[31/] Uncertainty of actual costs and benefits is to be considered by estimating minimum and maximum values and the probability of those values and all the alternatives are then evaluated using the 10 percent discount rate.[32/]

b. Policies Established by OMB Circular A-76

On August 4, 1983, OMB issued a revised Circular No. A-76. This Circular and its supplement establishes Federal policy regarding the performance of commercial activities by the Federal Government and set forth procedures for determining whether commercial activities should be performed under contract with commercial sources or in-house using Government facilities.[33/]

[29/] *Id*. at 1, 2.

[30/] *Id*. at 3.

[31/] *Id*. at 4.

[32/] *Id*. at 4.

[33/] Circular No. A-76 (Revised), at 1.

> This Circular states:
>
> "in the process of governing, the Government should not compete with its citizens. The competitive enterprise system, characterized by individual freedom and initiative, is the primary source of national economic strength. In recognition of this principle, it has been and continues to be the general policy of the Government to rely on commercial sources to supply the products and services the Government needs."
>
> The policy established by the Circular is to:
>
> "Rely on the Commercial Sector." The Federal Government shall rely on commercially available sources to provide commercial products and services. In accordance with the provisions of this Circular, the Government shall not start or carry on any activity to provide a commercial product or service if the product or service can be procured more economically from a commercial source." [34]

Commercial activities are defined as those which could be obtained from a commercial source. Included as examples of commercial activities are all of the activities involved in providing office space and other real property.[35]

4. General Accounting Office

a. Policies

1) Discount Rate Basis

The General Accounting Office (GAO) has advocated that the discount rate be based on the Government's borrowing cost, specifically on the average yields on outstanding marketable Treasury obligations with remaining maturities comparable to the period of the analysis.[36/] The rationale for associating the yield rate on Treasury obligations with the discount rate is that:

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[34] *Id.* at 2.

[35] See Attachment A.

(a) Government funds are not earmarked by source or use and disbursements are made from a single pool of funds; and

(b) When receipts are insufficient to meet demands, the Government borrows, and when there is a surplus, the Government reduces its borrowings and thus saves interest.[37/]

2) Risk and Uncertainty

The GAO has also established a policy regarding the risk and uncertainty of both cost estimates and future events. When the Government assumes a responsibility for risk and uncertainty that it would not assume under an available alternative, "a flexible percentage factor of up to 10 percent shall be added to the in-house alternative cost." This is intended to cover the possibilities of "obsolescence of... capital equipment" and "uncertainties regarding maintenance and production costs, prices, and future Government requirements."[38/]

Only where the alternative imposes the same level of responsibility on the Government as a purchase should considerations of risk and uncertainty be excluded from the

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[36/] GAO Handbook, Chapter 20, at 20-10, July 1, 1974; GAO Comprehensive Audit Manual, Chapter 10, at 10-10, March 1977.

[37/] *Id*. at 10-11.

[38/] *Id*. at 10-13.

comparison. In addition, no risk factor is to be applied where the activity is already being performed in-house because it is assumed that the risk and uncertainty factors have significantly diminished by virtue of the Government's prior experience.[39/]

3) Reliance on the Private Sector

The GAO's policy is also to favor reliance on private industry by adding a cost differential factor of 10 percent to the in-house costs in performing the cost comparison used to justify the initiation (new start) of an in-house program.[40/]

b. Comments on GAO Method

1) Discount Rate Basis

The GAO borrowing cost approach for establishing a discount rate is incorrect because it fails to consider the opportunity cost of preempted private sector investments. However, if current real Treasury borrowing costs are used, and if the costs of ownership are increased to account for its added risk and to implement its policy of relying on the private sector for commercially available goods and services, it appears that leasing would receive more favorable treatment than it does under Circular A-104.

a) Incorrect Assumptions

(1) GAO's approach is not valid for public buildings because the assumptions which support the GAO's rationale are

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[39/] *Id*. at 14.

[40/] *Id*. at 15.

not based on fact. In the case of public buildings, sources and uses of Federal funds have been earmarked. As discussed above, under the purchase contract programs authorized by Congress in 1954 and 1972, over 100 buildings were constructed for the Federal Government. These buildings were financed by private investors who either provided funds directly to the building contractors, or who purchased "participation certificates" issued by the Government specifically for these buildings. Thus, these buildings were financed by individuals desiring to invest in the precise type of property required by the Government. These Government buildings, therefore, directly preempted similar private sector investments, thus supporting the opportunity cost approach of OMB.

(2) Although it is true that deficits cause borrowing, it is not true that the cost of Government funds is based solely on the cost of borrowing. Historically, deficits have been a relatively small source of Federal funds, most of which come from taxation. Using the GAO rationale, if the national debt were paid and the budget in balance, there would be no cost associated with Government investments. This result makes clear the fact that the GAO position treats the Government like an independent, profit-maximizing operation, without any consideration of the impact of its investment decisions on the people.

(3) However, even assuming it would be appropriate to treat the Government as if it were an independent entity, no corporation without debt and with a balanced budget would

consider using a zero discount rate for making a lease-or-buy decision. Corporations must consider their total cost of capital--both debt and equity--and the rate of return on the alternative uses for their funds. Likewise, the Government must consider the cost of the capital it withdraws from the private sector--both from borrowing and from taxation.

The GAO position contravenes the policies established by OMB and by the Joint Economic Committee and recommended by all of the economists who testified on the issue of whether Government borrowing cost or private sector opportunity cost should be used to establish a discount rate. In addition, by ignoring the "cost" of tax revenues, the GAO position is not even a reasonable method of setting a discount rate for an independent entity. No private sector organization making such a decision would use its borrowing cost alone as a discount rate, but rather would consider the cost of both equity and debt (corresponding to funds available to the Federal Government from taxation and borrowing), the risk that the projected cash flow will not be met, and other factors. Real estate investors are currently looking for real Internal Rates of Return in the 11 percent to 14 percent range for good quality properties.

b) Current Real Treasury Borrowing Rate

It should be noted that at the present time, the average yields on Treasury obligations of 10 years or more is approximately 11.5 percent.[41/] The inflation rate is 2.5 percent.[42/] Therefore, the current real rate of interest on long-term Treasury obligations is approximately 9 percent. While this rate may not continue indefinitely, it is noteworthy that nominal and real rates on long-term Government securities have been high for some time, with nominal rates averaging approximately 13 percent as early as late 1981.[43/]

c) Distinction Between Cost-Benefit and Cost Comparison Analyses

GAO has indicated that it distinguishes cost-benefit analyses, used to determine whether a project should be undertaken, from cost comparisons of projects where the expected benefits are equal.[44/] This distinction has been proposed and rejected elsewhere in the Government.

In response to a proposal made by Defense Department analysts that a zero discount rate should be used internally for deciding whether to invest in defense systems with different cost schedules, a Rand report was issued explaining why real a discount rate of 10 percent is appropriate, noting the studies by Harberger and Stockfisch supporting rates in the

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[41/] Wall Street Journal, September 26, 1983, at 45.

[42/] Consumer Price Index change from August 1982 to August 1983.

[43/] Wall Street Journal, December 15, 1981.

[44/] GAO Comprehensive Audit Manual at 10-1.

8 to 10 percent range.[45] The author also showed the logical fallacies in the contentions of the analysts that a rate of less than opportunity cost should be used because of a distinction between the decision whether to have a system and the decision of which schedule of expenditures (front-loaded or rear-loaded) results in the lowest cost. The author pointed out that budgets are only fixed when seen from the bottom levels of management and that budgets are contracted or expanded in response to opportunities to obtain cost savings. He also noted that techniques used to handle risks in private investments (such as opportunity cost-based discounting) can be used to handle risks even in defense (surely the Governmental activity least like a commercial activity).[46]

In a lengthy paper on this subject, the author summarized recommendations for the discount rate made prior to 1976.[47] These recommendations, made by 8 economists, ranged from 6 to 12 percent nominal rate and from 4.6 to 10.7 percent adjusted for inflation.[48]

It is important to recognize that when evaluating whether a specific space need of the Federal Government should be satisfied by owning or by leasing real property, such as office space, the decision is not merely how to satisfy this space need, but also is implicitly whether to provide the space. This is because the choice of ownership of leasing will have budgetary consequences which will in turn affect the space requested by the agencies and the willingness of Congress to appropriate funds for this purpose.

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[45] R. Shisko, "A Review of Two Papers," Economics Department, The Rand Corporation, at 2.

[46] _Id_. at 7.

[47] R. Shisco, Choosing the Discount Rate for Defense Decisionmaking, Rand, July 1976.

[48] _Id_. at 10.

Federal agencies, like all organizations, can vary the amount of space required to perform their mission. Like any other organization, as the apparent cost of space is reduced, the demand will increase. The costs of providing space are balanced against the funds available for other agency purposes. Therefore, using an artificially low discount rate would not only result in ownership where leasing is more economical, but will result in additional space requirements and consequent additional displacement of private construction.

2) Risk and Uncertainty

GAO acknowledges that risk and uncertainty must be considered, and that a factor of up to 10 percent must be added to the Government's costs to do so. When the Government leases a building, it assumes significantly less risk than when it builds a building.

The Government does not assume the risk that the building will cost more to build than estimated. As GAO noted in a 1975 report on making present-value cost comparisons, according to a GSA survey of 44 GSA constructed projects and 33 privately constructed projects throughout the U.S., Federal construction of office buildings costs about one and one-half times as much as private construction.[49/] It is well known that cost overruns on Government programs are not uncommon. The cost growth experienced in the construction of the Hart Senate Office Building provides a recent and graphic example of this fact.

The Government does not assume the risk that construction will take longer than anticipated and that space may not be available when needed.

The Government does not assume the risk that the space originally desired will continue to satisfy its needs. It does not commit itself to a location indefinitely (in contrast to the 10 year leases typical to GSA), limiting its flexibility to increase, decrease, or abandon the space it controls at a location in response to population movements or changing requirements of the agency.

The Government does not assume the risk that the building systems will become obsolete and uneconomic.

These are substantial risks that do not exist with regard to leased space but do exist for owned space. According to GAO's own policy, therefore, a factor of up to 10 percent should be added to the costs of ownership. Indeed, GAO has recommended that this be done.[50/]

As noted in part III.B above, economists recognizing the possibility of using the Government's borrowing cost as a

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[49/] Procedures and Assumptions Used in Making Oresint-Value Cost Comparisons for Alternative Methods of Acquiring Federal Buildings, LCD-75-345, November 4, 1975.

basis for establishing a discount rate consider it mandatory that a risk factor be incorporated in arriving at a meaningful discount rate. One economist has stated that if a discount rate is based on the interest rate on Government obligations, a risk adjustment comparable to that implicit in the market evaluations of private utilities should be added. Even assuming a low real rate of interest on Government obligations of 3.5 percent, adding this risk factor would result in a real discount rate of 9 to 10 percent.[51]

In addition, although the Government already owns buildings, this does not reduce any of the risks discussed above and should, therefore, not be used as an excuse to ignore the increased risks of the ownership option.

3) Reliance on the Private Sector

Under the GAO policy, an additional 10 percent should be added to the cost of ownership estimated in Circular A-104 in conformance with its policy to favor reliance on the private sector. Each building is a new project which should be accorded this treatment.

5. Congressional Budget Office

a. Conclusions Regarding Discount Rate

The Congressional Budget Office (CBO) has recently issued a report on the Federal Government's public buildings

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[50] Letter from Elmer B. Staats, Comptroller General of the United States to Roy L. Ash, Director, OMB, November 4, 1974.

[51] J. Hirshleifer, Theory of Public Expenditure, Comments, 495, 499-500.

program.[52] This study concluded that the discount rate prescribed by OMB in Circular A-104 be reduced from 7 percent to 3 percent.[53]

CBO concluded that the OMB approach recognizes that Government investments reduce resources available for private sector investment, that GNP would be reduced if the Government invested in profits with below-market rates of return, and therefore, that the discount rate ought to value Federal resources at the same rate as private sector resources.[54] CBO also concluded that the GAO approach treats the Government like a private investor maximizing its financial position without regard to the efficient allocation of resources in the economy.[55]

CBO then concluded that "[t]he appropriate rate must discount the cost of capital actually experienced in the private sector, since that is the alternative use of resources, regardless of the option taken."[56]

CBO then, however, constructed a discount rate based on borrowing costs alone, rather than the total cost of capital which includes equity. Recognizing that private borrowing rates are higher than Federal rates because of the risk of financial failure, CBO concludes that an appropriate real discount rate for the purpose of lease-versus-construction comparisons is the sum of the risk-free real rate of interest plus a risk factor.

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[52] The Federal Buildings Program: Authorization and Budgetary Alternatives, Congressional Budget Office, June 1983.

[53] Id. at 49.

[54] Id. at 46.

[55] Id. at 47.

[56] Id. at 47.

CBO measured the risk-free real rate of interest is measured by the average real annual yield on three-month Treasury bills minus changes in the GNP deflator over the 1963-1982 period. It based the risk factor on the average difference between private sector rates for new mortgage commitments to finance commercial office buildings and long-term Treasury borrowing rates over the same period.

CBO determined the risk-free real borrowing rate to be approximately 1 percent and the risk factor to be 1.8 percent. These determinations result in a recommended discount rate of 3 percent.

CBO acknowledges that the risk-free real rate of return may be understated because private-sector capital investments are typically not financed with short-term obligations and considerations other than differences in expected inflation may account for the differences in long- and short-term borrowing rates.[57] CBO also acknowledges that this risk factor may be understated because of unquantifiable additional yields on private-sector obligations from discounts,

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57/ Id. at 49.

fees, or allowance for return from any participation in equity or from any sharing of rental income.[58/]

CBO also recognizes that its rate differs from the OMB rate because OMB's rate intends to represent real rates of return in private sector real property operations rather than approximate private sector borrowing costs and noted that many economists favor a discount rate based on rates of return on privately held assets to evaluate the costs of Government investment.[59/] CBO does not explain why it has chosen to use the inflation- and risk-adjusted Federal borrowing cost rather than an internal rate of return as the basis of its discount rate.

b. Comments on CBO Discount Rate

The discount rate recommended by CBO is inappropriately low for the following reasons:

1. The short-term obligations examined have lower interest rates than the long-term obligations issued for real estate investments.

2. The difference between the Federal borrowing rate and inflation over the period studied is probably atypical low and shows no sign of repetition. Today's long-term Treasury borrowing rate is about 11.5 percent and the inflation rate is in the 2.5 to 4 percent range, resulting in a real Federal borrowing rate of 7.5 to 9 percent.

[58/] Id. at 48.

[59/] Id. at 49.

3. The 2 percent risk adjustment is insufficient. Risk factors used by real estate industry analysts range up to 5 percent for development projects.

c. Case-By-Case Determination

In its study, the CBO also endorsed the case-by-case determination of the lowest cost alternative and noted the danger in adopting arbitrary targets for the mix of owned and leased space. The study concluded that, "under all discount rates, overall economies are maximized if the decisions for each project reflect case-by-case evaluation of the comparative cost of construction and leasing."[60] CBO further concluded that nationwide averages of constructions-versus-leasing economies should not be applied in individual cases.[61] The reason for rejecting the goal approach was explained as follows: "The widely varying results of cost comparisons for projects of different size and in different localities, however, underscores the danger of adopting arbitrary targets for acquiring types of space."[62]

6. General Services Administration

a. Study of Impact of Changes in the Discount Rate

The General Services Administration (GSA) issued a study in 1981 which concluded that the discount rate used in making the present value cost comparison is a major consideration in determining the lease-or-own decision.[63] In this study, GSA noted that over the last 30 years, the difference between the Treasury Bill rate and the Consumer Price Index (CPI) was never over 2.5 percent. GSA then determined that the decision to build or lease would be dramatically affected by the use of this rate rather than the OMB-prescribed rate of 7 percent.

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[60] *Id*. at 55.

[61] *Id*. at 56.

[62] *Id*. at 60.

The study also noted that other possible representative choices for the discount rate would be the prime rate, which was then and is now higher than the OMB rate, even when adjusted for inflation.[64]

b. Comments on GSA Study

The use of this 2.5 percent discount rate as even a possible representative discount rate is invalid for three reasons. First, the appropriate discount rate should be based on the concept of opportunity cost in the private sector, the cost of investments not made in the private sector because the funds had been taxed or borrowed by the Federal Government for a similar investment. This has been the policy of GSA, at least as recently as August 1975.[65]

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[63] Office of Planning and Analysis, Plans, Programs and Financial Management, May 1981.

[64] Id. at 18.

[65] Procedures and Assumptions Used in Making Present-Value Cost Comparisons For Alternative Methods of Acquiring Federal Buildings, GAO, LCD-75-345, at 18-21, letter to GAO from Dwight A. Ink, Deputy Administrator of GSA, August 25, 1975.

Second, even if GAO's "borrowing cost" method of determining an appropriate discount rate is employed, this rate would be the average yield on outstanding long-term Federal obligations, Treasury Bonds, with remaining maturities comparable to the period of analysis. It would not be a rate based on Treasury Bills, which are obligations of less than one year maturity and have lower yields than long-term Federal obligations.

Third, assuming that the Treasury Bill rate minus the CPI is an appropriate value for the discount rate (which neither GAO nor OMB assumes), it would be more consistent with the theory to use the average difference over that time period, .176 percent, rather than the maximum difference of 2.5 percent. The average rate, however, is obviously inappropriate and would result in the decision to build rather than lease in virtually all cases.

7. Office Building Industry Discount Rate

I regularly make decisions on whether to invest my company's resources and counsel for institutional clients on the purchase or development of proposed commercial real estate projects. I and others in the industry who make the present value cost comparison analysis currently require an internal rate of return of approximately 15 percent for purchase and up to 20 percent for development, because of the higher risks involved. If these rates are adjusted for current rates of inflation, they would result in real discount rates in the range of 10 to 15 percent.

B. Incremental Costs: Tax Effects

The second requirement for an accurate cost comparison is to include all relevant incremental costs, and only the relevant costs. We understand that the Administration is considering a proposal to include as a cost of leasing some portion of the depreciation deductions taken by a lessor to the Federal Government. It would be improper to include any part of the depreciations of lessors to the Government because the depreciation of real property is a fact which applies equally to all buildings; it is not a creation of the tax law. The many vacant and underutilized older buildings, including many owned by the Federal Government, which are found in every major metropolitan area attest to this fact.

Depreciation is a measure of the decline in value of an asset caused by wear, obsolescence, and other factors. Buildings depreciate whether they are owned by the Government or by the private sector. Therefore, depreciation is equally a cost of the Government's use of a building regardless of its ownership.

The cost recovery period established by the tax code measures depreciation. Prior to the enactment of the Accelerated Cost Recovery System, depreciation deductions were based through a "facts and circumstances" test for determining the useful lives of assets and on the original cost of the asset. Because of the difficulty in determining the useful life of an asset and because inflation created a substantial difference between original and replacement costs of long-lived assets, Congress set a fixed 15 year cost recovery period for real property. Therefore, the ACRS cost recovery allowances represent depreciation of buildings owned by the Government and by private lessors to the Government.

IV. OTHER EFFECTS OF COST COMPARISON METHOD EMPLOYED

A. Economic Growth

In determining the appropriate discount rate and incremental costs of the various methods of providing needed space, it is important to be mindful that the impact of these decisions extends beyond the Federal Government. The cost comparison must be made on a sound economic basis to avoid reducing economic growth by misallocating our Nation's capital resources. If capital is inappropriately withdrawn from the private sector for the construction or acquisition of a Federal building, through either taxation or Federal borrowing, private sector economic development will be preempted, economic inefficiency will result and economic growth will be retarded.

B. Tax Bases of Cities

Uneconomic Federal ownership of real property also undermines the tax bases of the cities. If the local real estate market is disrupted by Government overbuilding in an area where lease prices are already depressed by an oversupply of office space, property values and tax assessments may fall. In addition, whenever the Government owns rather than leases real property, the local tax base will be directly reduced by that amount of space unless payments-in-lieu-of-taxes are made to it.

C. Local Commercial Real Estate Markets and National Real Estate Industry

Federal construction in an area with an oversupply of office space would further depress prices and could disrupt the local commercial real estate market.

Uneconomic Federal construction would also require additional Federal borrowing or taxation and thereby tend to increase interest rates. This would adversely affect the entire real estate industry because interest rates have a major impact on the level of construction activity.

V. TIME FINANCING AUTHORITY

BOMA believes that the time financing authority provided by H.R. 630 presents two potential problems.

First, it tends to reduce the accountability of the agencies using the space and of GSA for the full cost of the space used. Time financing is advocated because the Federal Buildings Fund contains insufficient funds to permit desired construction or acquisition activities. However, this would remove an important incentive for requiring that the Standard Level User Charges assessed tenant agencies equal the commercial rate. This would tend to shift the cost of providing space from the agencies' budgets to GSA's budget, thereby reducing the accountability of the agencies for the full cost of their activities and removing a needed incentive to economize on the space used.

Second, to the extent that it causes any increase in Federal borrowing, it will tend to result in the further displacement of investment capital away from the real estate industry.

VI. FULL FUNDING

BOMA supports full accountability for all costs of leasing and ownership. However, BOMA believes that the Subcommittee should consider that this proposal may discourage the use of economical long-term leases by GSA.

ATTACHMENT A

SUMMARY OF TESTIMONY OF WITNESSES BEFORE THE SUBCOMMITTEE ON ECONOMY IN GOVERNMENT, JOINT ECONOMIC COMMITTEE, 1967, 1968

The first witness on the first day of these hearings, Jacob Stockfisch, Senior Research Associate, Institute For Defense Analysis, recommended the approach adopted by the subcommittee and ultimately by OMB.[1/] Stockfisch advocated that the discount rate should be the opportunity rate of return on investment in the private sector before corporate taxes, which rate was then between 10 and 15 percent. This figure was based on the rate of return in eight major sectors of the economy which ranged from 4 to 15 percent over the period 1961 to 1965.[2/]

The next witness, Morton Kamien, Associate Professor of Economics of Carnegie-Mellon University, agreed with Mr. Stockfisch's testimony and supported a discount rate of 10 percent.[3/] He focused on the types of uncertainty in investments and the various methods for adjusting for this uncertainty and distinguished investments unique to the Government from those which displace private investments,[4/] was substantially adopted by the subcommittee. He also noted that the Treasury revenue loss on income taxes paid by private enterprises engaged in such ventures must be considered.

[1/] Hearings of September 20, 1967 at 130-143.

[2/] Id. at 133, 137, 160.

[3/] Id. at 166-167.

[4/] Id. at 145-149.

The next witness, William Baumol, Professor of Economics, Princeton University, stated that the testimony of Messers. Stockfisch and Kamien demonstrated the "essential unity of the economics profession" in rejecting the use as a discount rate of the rate on long-term bonds when issued and in concluding that "the discount rate should be determined exclusively on the basis of opportunity cost."[5/] He supported the 10 percent rate and stated, regarding the use of Federal borrowing rates, "[I]f they lead to a discount rate figure in the vicinity of 3 or 3 1/2 percent, they constitute an open invitation to a wasteful use of society's resources. They will take resources away from uses where their yields are far higher and transfer them to employments providing much smaller benefits."[6/]

The next witness, Elmer B. Staats, Comptroller General of the United States, related the findings of a GAO study of the discounting practices of various Federal agencies. The rates varied widely from 0 to 15 percent and included: 4.5 percent for GSA; 4.2 percent for the Department of Transportation; 8 to 12 percent for the Agency for International Development; 6 percent of low risk utility programs for the Department of the Interior and 12 percent for programs considered to be a private rather than a public function; 5 to 9 percent for Atomic Energy Commission reactor

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[5/] Id. at 150.

[6/] Id. at 152.

studies; 10 percent for the Defense Department; and an implicit 20 percent for the Veterans Administration.[7/] Dr. Daniel Rathbun, who worked on the GAO report and accompanied Mr. Staats, next testified with Mr. Staats that the difference between the cost-of-capital and borrowing approaches was not as great as sometimes thought because "if you approach the cost to the Treasury of borrowing in a realistic way and include taxes foregone...," you end up with a 7.5 or 8 percent rate.[8/] Mr. Staats reiterated that "as a minimum [the discount rate] ought to be the cost of money plus a factor for taxes foregone."[9/]

Fred Hoffman, Assistant Director, Bureau of the Budget also advocated that where a Government investment corresponds to those of a particular sector of the private market, the discount rate should be the rate of return in that particular sector of the economy and that a 4 5/8 percent rate would be appropriate if risk was appropriately considered in calculating costs and benefits.[10/]

Another witness, Otto Eckstein, Professor of Economics, Harvard University, stated that there is no logic which would support the use of a 3 percent discount rate and that the waste resulting from the use of such a rate (specifically in the water resources area) could no longer be

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[7/] Hearings of January 29, 1968, at 4, 5, 13, 19, discussing report reprinted at 33-67.

[8/] *Id.* at 10.

[9/] *Id.* at 14.

[10/] Hearings of July 30, 1968, at 21, 27, 31.

afforded.[11] He stated that although the Government borrowing rate is the interest rate at which the Government as an enterprise is able to obtain capital by borrowing and is a measure of the risk-free long-term interest rate, it is not an appropriate discount rate because public investments are financed not only by debt, but by taxes and therefore that the opportunity costs in the private or public sectors exceeds the long-term Federal borrowing rate.[12] He also stated that if the Government borrowing rate was used, a risk premium must be added, either in the interest rate or elsewhere in the calculation, if it is to be used as a discount rate. He also concluded that the Federal borrowing cost for long-term capital was then 5 1/2 percent and that the opportunity cost for tax-raised capital was about 8 percent. He stated that a combination of both rates, weighted toward tax financing, should be used, resulting in a 7 to 7 1/2 percent discount rate.[13]

Arnold C. Harberger, Professor of Economics, University of Chicago was the next witness. He stated that the taxes lost as a result of displaced private investment should be added to interest paid by the Government.[14] He criticized the position taken by the Comptroller General (at the hearing on January 29, 1968) on the grounds that it concentrated on the cost of incremental borrowings rather than on the costs to the economy, which would include state and local sales and property taxes that would have been paid on displaced private investment. He concluded that the discount rate should be about 10.7 percent, and that something in the range of 8.5 to 12 percent was plausible.[15/]

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[11] Id. at 51.

[12] Id. at 55.

[13] Id. at 56.

[14] Id. at 57.

Harberger then examined the entire spectrum of plausible discount rates, the roughly 5 percent rate of long-term Government borrowing and the 15 percent yield on a corporate investment and suggested that the 15 percent corporate yield could be separated into 5 percent of pure risk free interest, 2 percent of risk premium, and 8 percent of taxes. If so, the opportunity cost to the Government is 13 percent: the 5 percent of interest plus the 8 percent of foregone taxes.[16/]

The next witness, Alain Enthoven, Assistant Secretary of Defense, Office of Systems Analysis, testified that "available evidence suggests that the opportunity cost of resources used by the Government in our economy is in the 5-10 percent range..." and that the 10 percent used by the Defense Department included a modest allowance for risk.[17/]

[15/] *Id*. at 65.

[16/] *Id*. at 66.

[17/] Hearings of August 1, 1968 at 136.

The next witness, Laurence E. Lynn, Jr., Deputy Assistant Secretary of Defense (Economics and Resource Analysis), testified that using either the opportunity cost of capital obtained through taxation or through borrowing results in a discount rate in the 7-10 percent range.[18/]

The next witness, M. Cecil Mackey, Assistant Secretary for Policy Development, Department of Transportation, testified that Federal Highway Administration and the Bureau of Public Roads used a sensitivity analysis with discount rates of 7.5, 10, and 12.5 percent.[19/]

The last witness, Robert A. Levine, Assistant Director for Research, Plans, Programs, and Evaluation, Office of Economic Opportunity, testified that OEO used discount rates of 5 and 7 percent in evaluating its human resource programs.[20/]

[18/] *Id*. at 144.

[19/] *Id*. at 152.

[20/] *Id*. at 163.

Mr. YOUNG. Please proceed.

TESTIMONY OF A PANEL INCLUDING JOHN E. AKRIDGE III, PRESIDENT, JOHN E. AKRIDGE CO., WASHINGTON, D.C., REPRESENTING APARTMENT & OFFICE BUILDING ASSOCIATION OF WASHINGTON, D.C., AND CHARLES F. FELDEWERT, PRESIDENT, FINANCIAL SERVICES GROUP, V. TURLEY-MARTIN, INC., ST. LOUIS, MO., REPRESENTING BUILDING OWNERS & MANAGERS ASSOCIATION INTERNATIONAL

Mr. AKRIDGE. Good afternoon, gentlemen.

I am John E. Akridge III, president of the John Akridge Co., a real estate development firm based in Washington, D.C. I have developed and own with others over 1 million square feet of office space in the Washington area over the last 10 years and leased none of it to the Federal Government. Therefore, I am not here out of self-interest, but rather, a real concern for H.R. 630.

I am testifying on behalf of the Apartment & Office Building Association of Washington, D.C., the local affiliate organization of the Building Owners & Managers Association International.

AOBA is interested in a number of specific issues raised by the Public Buildings Act bills pending in both Houses of Congress. My remarks, this morning, however, will focus on what I believe are the central issues of this legislation.

First, as has been discussed many times this morning, the method by which the Government should decide whether to satisfy its space needs by leasing, acquisition, or Federal construction; and second, the relative advantages or disadvantages of each method of providing space.

AOBA believes that the decision on the method of satisfying the space needs of the Federal agencies should be on a case-by-case basis and should be made by the most unbiased and accurate means possible. We believe such an analysis will show that leasing is very often the most cost-effective method of providing space for the Federal Government.

There may be temptations to bias the analysis in favor of construction, for reasons not based on cost effectiveness—use of an inappropriately low discount rate, the exclusion of interest cost, the exclusion of the cost of the risk of ownership, exclusion of operating costs and future repair costs, and the inclusion of fictitious costs of leasing space, would all tend to create such a bias. All such efforts should be resisted, and a method for an honest comparison must be developed.

As to the relative advantages and disadvantages of leasing, acquisition and Federal construction, we believe there are four factors which should be considered in evaluating these alternative methods for providing office space for Federal employees: Cost, risk, flexibility, and accountability. An examination of these factors shows that leasing provides substantial advantages over Federal construction and that it will often be more advantageous than acquisition as well.

The major advantages of leasing over Federal construction stems from the private sector's ability to build office space at a substantially lower cost than GSA. It is well-documented that Federal buildings cost more to build than functionally equivalent private sector office buildings. A study performed in 1976 for GSA, at the request of OMB, reached the following conclusions. They found the average cost of Federal office buildings studied exceeded the average cost of the privately owned building studied by 55 percent; they exceeded the cost of owner-occupied private office buildings, which is the highest quality space in the market, by 35 percent. These cost differences were attributed in part to building hardware and configuration factors. There were additional and higher quality items and less usable space in the Federal buildings. Other factors identified as tending to increase the cost of Federal buildings were additional documentation and reporting requirements, cumbersome procurement procedures, time delays in selecting design consultants, delays in analyzing and improving programs and design, and delays in awarding contracts. There were also certain statutory requirements.

We believe that a fundamental difference between the objectives and incentives of private and public construction programs account for much of the additional cost of Federal construction. The private sector builds for the purpose of providing functional space and making a return on investment, a profit. The Government appears to build to satisfy the desire for space and to maintain a desired image. Clearly, different goals.

The GSA study found that a private developer enjoys greater awards for eliminating unnecessary costs and suffers greater penalties if budgeted costs are exceeded than does his Government counterpart. In addition, the study found that there is greater construction management control by the private sector developer. Cost control responsibility on Federal projects is often transferred to the construction manager, who does not have as strong an incentive to control cost. Cost differentials between Federal and private sector construction have recently been noted in a study of the Federal buildings program by the Congressional Budget Office. Of course, there is a cost associated with the management control and other efficiencies of private sector construction; it is the profit of the developer. This is what gives him the incentive to be cost effective. It also compensates him for bearing the risks of ownership. In my experience with new buildings, this profit, not including the normal return on the developer's equity, is less than 5 percent of the rental payment. This 5-percent profit is what the Government pays to lease space constructed at up to 55 percent less cost, without itself bearing the substantial risks of building ownership.

Leasing is also more cost effective than Government acquisition of existing buildings. Potential cost differences between the acquisition of existing buildings and leasing are the cost of purchasing, reselling, financing, and operating the building. We believe that private sector lessors would be at least as cost effective as GSA regarding each of these costs.

The private lessor will have an advantage over GSA in purchasing or selling a building if he is more experienced in the purchase and sale of commercial real estate and more knowledgeable than the GSA personnel involved about the relevant real estate market. This will often be the case, because many lessors to the Government buy, sell, and develop many more office buildings than does

GSA. In addition, firms which specialize in the management, leasing and development of office space in a given geographic area may be more knowledgeable than GSA about the opportunities and problems of the local real estate market.

Let me make clear that I am not downgrading the buildings of GSA employees. In fact, it has been my experience that GSA has consistently been able to lease space on much more favorable terms than are available to private sector lessees. GSA leases space at lower rental rates; pays its rent in arrears rather than in advance. It leases without cost escalation passthroughs, and it provides several renewal options at the original rental price, or permits the Government to cancel the lease before its expiration.

These are some of the reasons why I have not leased space to the Federal Government.

On balance, however, we believe it is likely that the private sector real estate specialist will often have an advantage over GSA in purchasing and selling buildings at the best price and with the lowest transaction cost, because of their superior knowledge and experience regarding the purchase and sale of real estate.

A private lessor will also often have an advantage in cost effective building operation. For example, a 1981 study by the GAO concluded that the cost to GSA of cleaning Government buildings with GSA employees was approximately double the cost incurred by private lessors and was 1½ times more than when GSA contracted out the cleaning service. We believe that private sector lessors, subject to the rigors of the free market, will often have the skills and the desire to provide quality building operation services at a lower cost than GSA.

An analysis of the relative cost of financing is somewhat more complicated because it also involves the issues of risk and flexibility. An examination of this question shows that the financing cost of the lessor in excess of Treasury borrowing costs are caused by shifted ownership risks from the Government to the lessor and from providing additional flexibility to the Government.

GSA leases and Treasury bonds are both obligations of the Federal Government. If the period of the lease is the same as the maturity of the Treasury bond, we believe that investors see them as equally secure investments because both obligations are backed by the Government. When a lessor, borrows money to finance the ownership of a building to be leased to GSA, the lender will consider this secure source of lease payments in setting interest rate. However, the lender will demand a higher interest rate than would the purchaser of Treasury bonds to account for the ownership risk not applicable to the holder of Treasury securities. These risks include: Vacancies, casualty loss to the building, deterioration of the neighborhood, illiquidity of the investment, and cost of technological obsolescence. New technologies in energy conservation and communications require huge investments to keep office buildings competitive. The Government would bear all these risks and costs if it owned the building.

When the Government leases space, these risks of ownership are shifted to the lessor and cause the lessor's financing costs to increase over the cost of Treasury obligations.

Another reason that the lessor's financing costs exceed the Treasury borrowing cost is that the duration of underlying Government obligations is less for the lease than for the long-term Treasury bond. GSA leases permit the Government to rent space for time periods far shorter than the maturities of long-term Treasury bonds. One typical GSA lease arrangement has a base term of 5 years, with an option for the Government to extend the lease for 1 or more additional 5-year terms at the same price. Other GSA lease arrangements provide an option for the Government to cancel the lease after 2 or 5 years.

These lease arrangements provide the Government with valuable flexibility not available in acquired space. If the size of mission of the agency changes, if the agency is reorganized, or if the population to be served by the facility shifts, and its space no longer meets the needs of the Government, GSA can refuse to renew or, in certain cases, can cancel its lease and find other space.

Private organizations which own their own office space often meet the need for flexibility by purchasing more space than needed and then warehousing it or subleasing additional space. The Government, however, should not put itself in this position because warehousing is expensive and outleasing puts the Government in direct competition with the private sector. In a city such as Washington, a substantial amount of federally controlled office space outleasing, especially if in excess of the 10-percent limit currently imposed, is unfair. It could disrupt the local commercial real estate market.

Another benefit to GSA of its relatively short-term lease obligations is the ability to reduce its rental costs if prices fall back, but lock in the original rental price for a long period if prices rise. If office rental prices fall, as they have in many cities in the past 3 years, then GSA can allow its lease at the original rental price to terminate, and then negotiate a lower price for that same space or can vacate the premises and lease less expensive space somewhere else. If prices rise, it can exercise its option to renew its lease at the original price.

Therefore, to the extent that observed rates of interest paid by private lessors to finance their office buildings exceed the long-term Treasury borrowing rate, this difference is because risks of ownership are borne by the lessor and because GSA's lease obligations have a shorter term than do long-term Treasury obligations. However, the increased financing cost is the price the Government pays for eliminating its ownership risks, for increasing the flexibility often necessary to meet the changing needs of the tenant agencies and the citizens served by the Government facilities, and for enabling it to take advantage of market opportunities.

A further benefit of leasing over acquisition or construction is that it provides additional long-term budgetary accountability. When GSA acquires a building, its budget, or the Federal Building Fund, reflects the cost of the purchase. However, it does not reflect either the cost of the interest which must be paid on the additional Treasury borrowing debt necessary to finance the purchase, or the cost of the Government's ownership risks. Failure to reflect these costs of financing the asset and its budget, shifts a significant part of the total cost of GSA's building acquisition or construction or an asset from its budget to the Treasury's interest account. Leasing, on the other hand, attributes the cost of financing to the cost of acquisition of the asset, because the lease payments charged to the agency's budget include the financing cost. The failure to reflect the risk of ownership shifts another substantial part of the real cost of the acquisition or construction from the GSA budget in the year of the acquisition or construction to its budget in future years. These future expenses will be the real property operations expenses for technological obsolescence costs and Federal Buildings Fund losses for vacancies. With leasing, it is a simple matter to determine the total obligation of the Government under the lease by multiplying the rental amount by the lease term, exclusive of any options. We recognize that in some cases, acquisition and even Federal construction may be more advantageous to the Government than leasing—for example, where the supply of office space exceeds the demand for space, that excess supply has resulted in opportunities for economical acquisitions, or where construction costs are very low relative to rental rates. Generally, however, we believe that leasing very often offers very significant advantages to the Government over both acquisition and Federal construction, and that the ability of the private sector to lease space to the Government should be viewed as a substantial benefit to the Government which should consequently be preserved and enhanced.

We appreciate this opportunity to address these issues before the subcommittee. I would be happy to answer any questions.

Mr. YOUNG. Thank you very much, Mr. Akridge.

We will proceed with Mr. Feldewert's testimony. Mr. Feldewert, without objection, your full statement will be made a part of the record, and if you care to summarize, please do so in your own way.

Mr. FELDEWERT. I do, Mr. Chairman, and thank you for the opportunity.

I am Charles Feldewert, president of the Financial Services Group of Turley-Martin Co., a real estate management, leasing and development firm based in St. Louis, Mo. I am a certified public accountant and practiced with Peat, Marwick & Mitchell for 7 years before joining Turley-Martin. Approximately 5 percent of the space operated by the Turley-Martin Co. is leased to the Federal Government.

I am speaking today on behalf of the Building Owners and Managers Association. BOMA is the trade association of the office building industry. BOMA's 5,000 members own or manage nearly one billion square feet of office space in over 70 cities. This legislation is of concern to the office building industry because of its potential impact on commercial real estate markets in areas where the Federal Government leases a substantial amount of space and on the real estate industry nationally. BOMA has testified to this subcommittee on Public Buildings Act legislation in both the 96th and 97th Congresses.

Mr. Akridge, testifying on behalf of the Apartment and Office Building Association, the local BOMA organization, has just explained why leasing is often the best way to satisfy the space needs of the Federal Government. BOMA believes that the public buildings policy of the United States should be to provide needed space through construction, acquisition, or leasing, according to whichever method will result in the lowest cost. The lowest cost method should be determined by comparing appropriately discounted incremental costs on a case-by-case basis. Such a determination is required by the Office of Management and Budget and has recently been endorsed by the Congressional Budget Office.

An exception to this lowest cost rule should be made for headquarters and monumental buildings, which should be owned even if leasing would be less expensive. Another exception should be made for space needed for short or indefinite durations or which otherwise requires more flexibility than usual office space. Such space should be provided by leasing even if the ownership would be less expensive. In all other cases, the lowest cost method should be used.

BOMA advocates this policy because it believes that the office building industry will very often be able to provide better space, at the right time, in the right place, and at a lower cost than GSA. BOMA advocates an unbiased system for determining the lowest cost alternative and urges the subcommittee to guard against any effort by those who favor Government construction, regardless of the cost, to bias the analysis against leasing.

The first requirement for an accurate determination of the comparative costs of leasing and ownership is the selection of an appropriate discount rate. The discount rate is used to reduce cash outlays in future years to their present value. The time value of money reduces the present value of future outlays in proportion to the amount of time in the future that the outlays occur. Construction and acquisition involve much higher outlays in the early years than later; leasing involves roughly equal outlays over the duration of the project. An inappropriately low-discount rate would increase the calculated present value of the outlays made in the later years and would therefore bias the decision against leasing.

Although there is wide agreement that the selection of a discount rate is important to the outcome of the cost comparison analysis, there is disagreement about the conceptual basis for constructing the correct discount rate and about the specific discount rate which should be used.

We believe that the correct conceptual basis for determining the appropriate discount rate is the opportunity cost of capital in the private sector for similar investments and that the specific discount rate which should be used is at least the 7 percent currently prescribed by OMB.

The private sector opportunity cost for determining the appropriate discount rate was adopted by OMB in 1972. Based on this approach, OMB specified in circular A-104 the use of a 7-percent discount rate which represented the internal rate of return on private sector general-purpose real property exclusive of property taxes and expected inflation.

The opportunity cost approach and the 7-percent rate are amply supported by a report issued by the subcommittee on Economy in Government of the Joint Economic Committee in 1968, by the testimony of the numerous governmental and private economists before that subcommittee in 1967 and 1968, and by prior and subsequent economic analyses.

The subcommittee examined this subject in great detail because of concerns that artificially low-discount rates were being used to justify uneconomic Government investments. The subcommittee stated the following conclusions in its report.

First, the discount rate should be based on the opportunity cost of displaced private spending, not on the Government's borrowing costs. As the subcommittee stated, this is because the Government is an arm of society, not an independent organization which seems to maximize its profits, and because its purpose should be to sustain the private sector and not to exploit private citizens to achieve its own ends.

The Congressional Budget Office recently issued a report which reached the same conclusion. The CBO study concluded that the appropriate rate must discount the cost of capital actually experienced in the private sector, since this is the alternative use of resources, regardless of the option taken. Use of low Federal borrowing rates tends to encourage inefficient use of scarce capital. CBO then constructed a discount rate based on Federal borrowing cost plus a risk factor. This risk factor subject was discussed by Mr. Armbrust earlier this morning. We believe this rate is too low, because real Federal borrowing rates over the period studied were abnormally low due to unanticipated high rates of inflation, and because the risk factor calculated by CBO was too small.

CBO understated the risk factor because they relied upon the spread between Treasury obligations of risk-free investments and private sector rates for new mortgage commitments to finance commercial office buildings. They found this difference, this spread, to be approximately 2 percent, and therefore concluded that 2 percent was the risk rate. However, as any home buyer knows, your local S&L will not loan 100 percent of value. You must have a down-payment of 10 percent or more. If the S&L forecloses, the homeowner loses his downpayment, his equity in the home. Generally, the S&L suffers only a small loss, if any. The same is true in commercial real estate. In commercial real estate lending, the downpayment, generally known as the equity investment, is usually a minimum of 20 percent of value. This equity investment by the developer owner is a buffer for the commercial lender. The developer owner, not the lender, carries most of the risk, and if the project goes sour, loses the entire equity investment. When the greater risk borne by the developer, which was not taken into account in the recent CBO analysis, is added to the lender risk, the real risk factor is far larger than the 2 percent calculated by CBO. In my opinion, this risk factor exceeds 5 percent.

Second, the appropriate method of determining the specific discount rate depends on whether explicit allowance is made for risk and uncertainty in the cost estimate. Where such allowances are not made, the opportunity cost of displaced private spending observed in the private capital market should be accepted as the discount rate. The OMB Circular does not make explicit allowances in the cost estimates for risk and uncertainty, such as faulty design, construction delays, and our old friend, cost overruns.

Third, where the Government investment displaces a specific sector investment, the rate of return in the sector of the economy from which the investment is displaced is an appropriate discount rate. It should be noted that in the last 30 years, over 100 Federal buildings have been constructed under two "purchase contract" programs authorized by Congress, whereby buildings were financed by private capital and constructed under lease purchase agreements with GSA. These buildings were financed by private investors, who either provided funds directly to the building developer or purchased participation certificates for these buildings from the Government. In either case, it is clear that these investments directly preempted private investments in similar property.

These conclusions have been more recently supported by the American Enterprise Institute study on economic policies and by other economic literature. These conclusions are also supported by the office building industry, which employs these principles in making similar real estate investment decisions. I regularly make decisions on whether to invest my company's resources and counsel our institutional clients on the purchase or development of proposed commercial real estate projects. I and others in the industry who make the present value cost comparison analysis currently require an internal rate of return of approximately 15 percent for purchases and up to 20 percent for development projects—the latter, because of the higher risks involved.

If these rates were adjusted for current rates of inflation, they would result in real discount rates in the range of 10 to 15 percent.

A second requirement for an accurate cost comparison is to include all relevent incremental costs, and only the relevant costs. We understand that the administration is considering a proposal to include as a cost of leasing some portion of the depreciation deductions taken by a lessor to the Federal Government. It would be improper, in our opinion, to include any part of the depreciation deductions taken by lessors to the Government, because the depreciation of real property is a fact which applies to all buildings: it is not a creation of the tax law. The many vacant and underutilized older buildings, including many owned by the Federal Government, which are found in every major metropolitan area, attest to this fact.

Depreciation is the measure of the decline in value of an asset, caused by wear, obsolescence, and other factors. Buildings depreciate whether they are owned by the government or by private sector. Therefore, depreciation is equally a cost of the Government's use of a building, regardless of its ownership. The cost recovery method established by the Tax Code measures depreciation. Prior to the enactment of the ACRS system, depreciation deductions were based on a facts and circumstances test for determining the useful life of the asset and, of course, on the original cost of the asset. Because of the difficulty in determining the useful life of an asset, and because inflation created substantial difference between original and replacement costs of long-lived assets, Congress set a 15-year cost recovery period for real property. Therefore, the ACRS cost recovery allowances represent the current best estimate of the depreciation of buildings owned by the Government and of buildings owned by private lessors to the Government.

In determining the appropriate discount rate and incremental costs of the various methods of providing needed space, it is important to be mindful that the impact of these decisions extend beyond the Federal Government. The cost comparison must be made on a sound economic basis to avoid reducing economic growth by misallocating our Nation's capital resources. If capital is inappropriately withdrawn from the private sector for the construction or acquisition of a Federal building, either through taxation or Federal borrowing, the private sector economic development will be preempted, economic inefficiency will result, and economic growth will be retarded.

In addition, uneconomic Federal ownership of real property undermines the tax base of cities. If the local real estate market is disrupted by Government overbuilding in an area—and in some cases, by Government overbuilding, where lease prices are already depressed by an oversupply of office space—property values and tax assessments fall. In general, whenever the Government owns rather than leases real property, the local tax base will be directly reduced by that amount of space unless payments in lieu of taxes are made to it.

As discussed earlier, we advocate a completely unbiased cost comparison method for determining whether to lease or own real property. However, in resolving any uncertainty you may have about the appropriate cost comparison method, a relevant long-established Federal policy should be considered. OMB Circular A-76, issued in 1967 and most recently revised this year, states the Federal Government policy regarding its performance of commercial activities. This circular states that it has been and continues to be the general policy of the Government to rely on commercial sources to supply the products and services the Government needs. This policy recognizes that the competitive enterprise system, characterized by individual freedom and initiative, is the primary source of our national economic strength. This policy has also been recognized by the General Accounting Office. The jurisdiction for this policy succinctly states the reason that leasing is very often the best way of providing space to the Government, and the reason that the office building industry believes that it will continue to lease space to the Government as long as the cost comparison method is not biased against leasing.

I would like to note in closing that in my remarks this morning, I have not discussed other issues raised by the bill before this subcommittee. A discussion of time financing authority, which we believe could increase interest rates by stimulating increased Federal borrowing, and full funding, which we believe could result in shorter and thus more expensive terms for Government leases, is contained in my written statement.

Thank you for the consideration of our views on this subject of great importance to us, and I will be happy to answer or attempt to answer any questions that you may have.

Mr. YOUNG. Gentlemen, thank you very much for your statements.

I guess this one, I would like you to go back over Mr. Feldewert. I did not have a chance to look at your testimony earlier. But you heard the conversation between Treasury and the subcommittee concerning the new method of depreciation incorporated in the Tax Reform Act of 1983. It appears that the Government is going to be paying more to lease space than the private sector.

Do you agree with this assessment, and would you care to comment on the Tax Reform Act of 1983?

Mr. **Feldewert.** I believe that most of the comments that were made by the members of your committee are probably on target. Certainly, in a market, given the alternative of leasing to the Government with added cost—you may characterize them as "reduced tax benefits," I may characterize them as "added costs"—that leasing to the Federal Government with added costs as opposed to leasing to the private sector means either you do not lease to the Federal Government, or you lease to them at a higher rate. I cannot dispute what was stated earlier, and which I believe Mr. Perlman in the main agreed with.

Mr. **Akridge.** If I might comment on that, we have calculated—AOBA has calculated—that the fact of cost differential that a building owner would have to charge in order to be on the same basis after tax, leasing to the Federal Government or nonprofit, is somewhere between $5 and $6 per square foot. That would put him in the same income level after tax, leasing to the private sector.

Mr. **Feldewert.** I have not run a calculation—just to follow up on that—in many markets that cost may not be that high. It would be influenced by many things, including the local market and various methods of handling renewals and so on.

Mr. **Young.** Mr. Shaw, do you have any questions?

Mr. **Shaw.** I have an observation I would like the gentlemen to comment on. The statement was made pretty much through both the testimonies that very often, the Federal Government can go into the public sector and lease the building cheaper than it can construct one. Of course, we also have a question of something that has been known, called lately purchases of opportunity, particularly where you have an overabundance of office space, which can be a temporary shake-out period for the Federal Government. The Federal Government throws many impediments in front of itself for construction, certain provisions that a certain type of workers have to be used, certain wages have to be paid, certain designs have to be used, certain considerations of the local community have to be considered, a certain amount of the project has to go to the placement of art. We also have a question as to access to the buildings for the handicapped. Putting all those impediments in front of the Federal Government, is that the general basis for your consideration as to the added cost? I believe you first raised the point, Mr. Akridge.

Mr. **Akridge.** No, sir. Our basis for the increase in cost has to do with many other factors as well, including the necessary bureaucracy that the construction project must come through in order to finally reach approval. The report which was done for GAO, I believe, lists—and I have it in my written testimony—six specific factors which tend to increase the cost to the Federal Government as opposed to the private sector.

Mr. **Shaw.** I think it is important to point out that that bureaucracy is not exclusive to purchasing. There is a rather cumbersome process we go through on leasing, also, which I have seen since I have been on this committee as a nightmare to some of the landlords in the area, and trying to put up with some of the nonsense that we put them through, and some of the hoops that we have to put them through, to go through a leasing provision.

Mr. Akridge. That is true, but many leases are negotiated with a lot less bureaucracy involved—the smaller leases, the shorter term leases—and GSA acts much more like an entrepreneur in acquiring space, by putting out a request for proposal, receiving what in effect are bids, and then choosing the lowest bid. This eliminates the 2- to 3-year period just to construct the building, much less the planning.

Mr. Shaw. All right. Let us talk about purchases of opportunity, purchases of existing buildings. Would your testimony be germane to that, and if so, would you expand upon it?

Mr. Akridge. I think there are certainly times at which purchases of opportunity would be appropriate for the Federal Government: in markets and in times when the supply of space far exceeds the demand, and the entrepreneur who has built that building is going to sell that building at cost, or in some cases, maybe below cost, in order to cut his losses. There, the Federal Government could avail itself of not only the efficiencies that I referred to of having the building built by the private entrepreneur who has the incentive to cut the cost, but also by buying a building below production costs in the private sector, which in fact would be a very definite savings to the Federal Government, and we would very much support that.

I think our testimony is all aimed at trying to house the Federal employee as cheaply as possible, but there are many considerations. All we are trying to point out is what makes up cheap.

Mr. Shaw. It would also be your opinion, then, too, that it would be very much to the advantage of the Federal Government to try to negotiate options to purchase as part of the lease agreement.

Mr. Akridge. I think so. I think that there will be some cost associated with that provision. I think that it will be minimal, especially if the option is far enough in the future. The closer the option is to the present, I think, the more you will have to pay for it.

Mr. Shaw. Yes, I understand.

Mr. Feldewert, in your opinion, what will be the effect on rent of the discrimination that you touched upon in your testimony as to depreciation guidelines?

Mr. Feldewert. Well, as I stated, I really have not made a calculation of that. I would think in our area, the effect will probably be less than in certain other areas. It will certainly result in higher cost to the Federal Government, to nonprofit organizations, where that is applicable. In our area, in many cases, these organizations, including the Federal Government, represent only a small portion of the total building tenancy. In that case, there will be no effect. Where the act comes into effect, I would think that the incremental difference would be in the range of 10 to 15 percent of the prevailing rentals.

Mr. Shaw. I yield back, Mr. Chairman.

Mr. Akridge. Mr. Shaw, we have a calculation we would be happy to furnish you, if you would like to see it.

Mr. Shaw. I would like to see that. I think that we here on this committee are concerned about that.

Thank you.

[The following was received from AOBA for the record:]

Apartment and Office Building Association,
Washington, D.C., January 10, 1984.

Hon. Clay Shaw,
Cannon House Office Building, Washington, D.C.

Dear Congressman Shaw: As you requested, we have calculated a comparison of leasing rates assuming 40 year straight-line depreciation instead of 15 year accelerated cost recovery. The calculation would, of course, apply to new construction.

Because of the varying construction dates, financing method and term, lease terms, etc., it would be most difficult to compare existing buildings on other than a case-by-case method.

Average per square foot price of new construction in the Washington Metropolitan Area (excludes land): $125.00; 15 year ACRS—($125 X 6.67%), $8.34; 40 year straight-line depreciation—($125 X 2.5%), $3.13; Difference in dollars—$5.21; Average per square foot leasing cost in Washington Metro Area—$16.00; Percentage increase—32.5%.

Should you desire further information, we will be happy to have a certified public account who is active in the development of buildings in this area speak with you.

Sincerely,

Donald R. Slatton,
Executive Vice President.

Mr. **Young**. Mr. Levitas.

Mr. **Levitas**. Thank you, Mr. Chairman.

Just by way of followup on that last point, I would be interested to see your calculation, but in the case of an office building in which you have a number of tenants—accountants, attorneys, insurance companies, travel agencies—and then one or two office suites leased to nonprofit organizations, No. 1, how would you expect that would be treated, and No. 2, how would that be treated for the question of depreciation under the proposed bill?

Mr. **Feldewert**. I must admit I have not seen the latest version of this act. It is my understanding, however, that there is an amendment to raise the threshold level to a point where the leasing of a portion of a building below a certain percentage factor—I believe that is the way it set up—would not trigger this change. I think that lessors are going to look very carefully at this threshold, and they are going to be doing a lot of calculations to make sure that they do not cross it, because if they cross it, it would be a very significant factor in their total cost and their total operating cost of that building.

Mr. **Levitas**. In your testimony, Mr. Feldewert, you say a couple of places that BOMA advocates an unbiased system for determining lower cost alternatives. On the first summary page on your testimony, you say you advocate an unbiased system for determining the lowest cost alternative, and urge this subcommittee to guard against any effort by those who favor Government construction, regardless of the cost, to bias analysis against leasing. I do not know of anybody who favors Government construction regardless of cost, except in monumental buildings, which you also support. But at the end of your testimony, on page 44, you say:

> BOMA supports full accountability for all costs of leasing and ownership. However, BOMA believes that the subcommittee should consider that this proposal may discourage the use of economical long-term leases by GSA.

Now, maybe I do not understand precisely what those two statements contrasted with each other mean, but it seems to me that an unbiased system is going to let the chips fall where they may. And while it may mean that it will indicate higher costs than we now see in long-term leases, which may discourage GSA from pursuing those types of leases with that type of accountability, it nevertheless would be an unbiased system.

Mr. **Feldewert**. I guess it depends upon what you consider a bias and what you consider not a bias. Mr. Armbrust discussed this morning the factors in circular A-104 that he felt tended to bias it toward leasing. I submit that there are some factors in Circular 104 that bias it toward owning. For instance, in the attachments to that circular, the assumption is made that a building after 30 years retains 60 percent of its value in constant dollars—we are not talking about inflated dollars. We are talking about constant dollars. Gentlemen, in the real world, that just does not happen anymore. The technological changes which have occurred and are occurring with greater rapidity simply do not allow a building 30 years old to be competitive with a new building without very, very substantial rehabilitation expenditures, which are not provided for in this circular.

For example, the Federal Government has a million-square-foot building in downtown St. Louis, called the Mark Building, which is virtually unoccupied. I am not sure of the exact dates, but I am sure they have not occupied it more than 30 or 40 years. The reason they are not occupying is that it is obsolete, and the cost to redo it would be so enormous that it does not justify the expenditure.

So what we are trying to say is that the present circular given a change in the discount rate, without a thorough review of it, would bias the decision toward purchasing. There are both sides to that coin here, and we do not want to discourage long-term leasing by overstating the cost, using a low discount factor. That is what we are talking about.

Mr. **Levitas**. In addition to that, I take it that you would have no objection, for purposes of congressional budgeting, to treat long-term leasing in the same way—assuming the accounting was worked out.

Mr. **Feldewert**. Assuming the proper discount was applied to the future rental payments, assuming the cost as mentioned earlier of carrying that cost, if the financing is included—no. Given an unbiased analysis, a full-cost analysis of those alternatives, we do not fear it.

Mr. **Levitas**. Thank you very much.

Mr. **Young**. Gentleman, thank you very much for your testimony. We appreciate it very much. The committee will stand in recess until Tuesday, November 2, at 12:30.

Thank you very much.

[Whereupon, at 1:22 p.m., the subcommittee recessed.]

[Subsequent to the hearing, supplemental questions were submitted to Messrs. Akridge and Feldewert by Representative E. Clay Shaw, Jr. The questions and responses follow:]

BUILDING OWNERS AND MANAGER ASSOCIATION INTERNATIONAL,
Washington, D.C., December 22, 1983.

Hon. E. CLAY SHAW, Jr.,
Ranking Minority Member, Public Buildings and Ground Subcommittee, Committee on Public Works and Transportation, House of Representatives, Rayburn House Office Building, Washington, D.C.

DEAR CONGRESSMAN SHAW: On behalf of the Building Owners and Managers Association (BOMA) International and the Apartment and Office Building Association (AOBA) we are pleased to respond to questions in your letter of November 9, 1983. We understand that our response will be made part of the hearing record of October 27, 1983.

We would like to thank you for this opportunity to provide additional information about the office building industry to the subcommittee. We have included as a part of our response a memorandum detailing BOMA's views on issues related to the Public Buildings Act. Although these issues were outlined in our testimony, we request the subcommittee also make this memorandum part of the record.

If we can provide further information in the future please feel free to call upon us.

Sincerely,

CHARLES F. FELDEWERT,
President, Financial Services, Turley Martin Co., St. Louis, Mo.
JOHN E. AKRIDGE III,
President, John Akridge Co., Washington, D.C.

Building Owners and Managers Association (BOMA) International and Apartment and Office Building Association (AOBA) responses to Representative Shaw's questions in his letter of November 9, 1983:

Question 1. You have stated your opposition to an open-waiver of the out-leasing limit and I can understand your concern. However, in certain instances such as the Old Post Office building downtown where this limit has been exceeded we have ended up with a beneficial result. Rather than address the out-leasing question in broad terms, are there certain activities for which you would like to see a prohibition against out-leasing?

Answer. We believe that the out-leasing of retail space in unusual historic structures such as the Old Post Office in Washington, D.C. is appropriate. This is because of the unique nature of the pedestrian access portions of the building and the prominent location of the building in the Pennsylvania Avenue Development Plan.

Activities where out-leasing should be prohibited are those where the Government would unfairly be competing with the private sector. For example, the out-leasing of excess office space owned by GSA in excess of its needs would put the Government in direct competition with the private building owners who paid the taxes to fund the Government building. If the Government out-leases space in the slack real estate market, it increases the risk of financial failure which developers must bear by further depressing rental rates and real estate values.

In addition, the ability to out-lease such space may encourage Federal ownership and "warehousing" of excess space, thereby wasting Government resources.

Out-leasing of retail space in the lobbies or other pedestrian access spaces of an office building is generally less of a problem, especially if it is limited to newsstands and other convenience services often operated by the disadvantaged. However, extensive leasing of retail space in Government buildings presents the same problems of unfair competition with the private sector. Out-leasing to restaurants, banks and similar tenants reduces the ability of the private sector to provide convenient access to these services to their tenants and should therefore generally be limited to the 10 percent of building area provided in H.R. 630.

In order to protect private developers from unfair competition by the Government and to avoid encouraging excessive construction or acquisition of Federal buildings, the out-leasing waiver language should provide that:

out-leasing of office space should continue to be prohibited; and

the 10 percent limit may not be exceeded except in cases where the pedestrian access areas of the building comprise an unusually large percentage of the building, and where at least one committee approves such a waiver after a request by the Administrator.

Question 2. What type of exercise does a corporation go through when determining where to lease or build and where to locate?

Answer. The criteria used by a corporation to determine where to lease or build depends on the type of facility. However, the following analysis is generally used:

A. Building Access—The convenience to persons served by the building; the availability of required services such as public transportation, highway access and other special needs; and neighborhood safety and stability are considered.

B. Economics—Once the general location has been determined, the economics of alternative facilities is considered. Lease rates, utility rates, local tax structure and other occupancy costs over the term of the lease are evaluated.

C. Employee Consideration—Of the alternative facilities acceptable in terms of building function and economics, the final decision is often based on employee considerations including: convenient parking facilities, access to public transportation, food services, functional layout, security and working environment.

Question 3. At one time, the government had a siting policy which was later modified, requiring that all Federal activities be located in the redevelopment area of a city. From your own experiences, what factors should be taken into consideration when determining the location of a facility?

Answer. Generally speaking we believe that the Federal Government should use the same criteria when selecting a site as the private developer or corporate tenant, as listed above in Answer #2.

Question 4. Adoption of the full funding concept for leases may conceivably result in GSA negotiating the shortest lease term possible. On average, what are the lease periods currently being negotiated and do you feel owners would be willing to negotiate one- or two-year leases?

Answer. Most leases with private sector tenants fall in the 5 to 10 year range. The rates on one and two year leases for office space are higher than long term leases because the costs of remodeling the space to meet the needs of the tenant must be amortized over a shorter period and the risk of vacancy is increased. In a market with excess space, one and two year leases could be negotiated by GSA, although generally at higher rates than long term leases. In a market with a shortage of space, GSA may not be able to negotiate a short term lease. If GSA only wants short term leases, the Government will be the tenant of last resort.

Question 5. I don't know if you were here for the testimony of the Congressional Budget Office but they suggested that the discount rate used for comparing leasing with government ownership be based on long-term Treasury borrowing rates plus a risk factor of three percent. Do you agree with this?

Answer. CBO recommended a 3 percent discount rate based on a risk-free real borrowing rate of 1 percent and a risk factor of 2 percent. We do not agree that a 3 percent discount rate is appropriate for the following reasons:

1. The short-term federal debt obligations examined by CBO to establish a risk-free borrowing rate have lower yields than long-term obligations with maturities similar to the life of real estate investments. Long-term obligations are issued to finance private sector real property investments. Under the "purchase contract" program, long-term obligations were issued by the Government to finance public buildings. GAO, in constructing a discount rate based on Treasury borrowing costs, would use the yields on long-term obligations.

2. The 1 percent difference between the yield on Federal debt and inflation over the time period examined by CBO is atypically low because of unprecedented and unanticipated inflation during that period. The yield on long-term Treasury obligations today is about 11.5 percent and the inflation rate is in the 2.5 to 4 percent range. This results in a real Federal borrowing rate of 7.5 to 9 percent.

3. The 2 percent risk adjustment used by CBO is insufficient. Based on information collected by BOMA, risk factors used by real estate industry analysts are 5 percent or more for development projects. The discrepancy between the 2 percent risk factor estimated by CBO and the 5 percent factor used by the industry exists because CBO calculated only the risk premium contained in mortgage debt obligations. CBO ignored the major part of the risk on a real estate investment. This primary risk is borne by the equity holders, not the lenders.

Lending institutions which provide long-term financing for investments in real estate generally require that at least 20 percent of the capital come from equity investors. If the project fails, this 20 percent "down payment" is lost before the lender's principal is put at risk. The required equity capital greatly reduces the risk factor on debt obligations below the total risk factor for real estate investments.

4. Because CBO did not use a discount rate based on the before-tax rates of return on similar private sector investments, it is necessary to explicitly account for the lost Federal income tax revenues caused by the displaced private sector investments. There is no mention in the CBO study of the consequent need to include this revenue loss as an additional cost of Federal real property ownership.

In addition, because at a minimum the discount rate must at least be equal to the cost of money, the interest rates quoted in the newspaper, currently in the 11 to 15 percent range depending on the term of the obligation and the credit-worthiness of the borrower, show that the 3 percent rate is not valid.

Question 6. By what method do you employ contracting services for construction of office buildings and are there any situations under which you might consider using design competition?

Answer. Generally, the private office building developer selects contracting services through the use of a competitive bidding process including the consideration of references of competing firms. The private developer of office space generally limits the use of design competitions to headquarters and other "monumental" buildings, or in certain "build to suit" situations where unusual use requirements must be met.

TO ESTABLISH CERTAIN PUBLIC BUILDINGS POLICIES FOR THE FEDERAL GOVERNMENT

TUESDAY, NOVEMBER 1, 1983

House of Representatives,
Subcommittee on Public Buildings and Grounds,
Committee on Public Works and Transportation,
Washington, D.C.

The subcommittee met, pursuant to recess, at 12:45 p.m., in room 2237, Rayburn House Office Building, Hon. Robert Young (chairman of the subcommittee) presiding.

Mr. Young. The Subcommittee on Public Buildings and Grounds will please come to order.

The Subcommittee is meeting today to receive testimony on all policies of the Public Buildings Service of the General Services Administration, and on H.R. 630, a bill to establish public buildings policies for the Federal Government, to establish the Public Buildings Service in the General Services Administration, and for other purposes.

The subcommittee is pleased to have with us today two very distinguished Members of Congress, as well as the chief judge of the eastern district of Missouri, the Honorable John F. Nangle.

In addition, the subcommittee will receive testimony from the Administrative Office of the U.S. Courts, the American Institute of Architects, and the American Consulting Engineers Council.

We welcome everyone and will proceed in an expeditious manner.

The subcommittee commenced these hearings last week, at which time, we received testimony from governmental agencies, the Congressional Budget Office and the General Accounting Office. They were very enlightening and these hearings today will assist us in formulating legislation designed to streamline the policies of the General Services Administration.

At this time, I would like to welcome all of the witnesses, and I will now yield to the ranking minority member, the Honorable Clay Shaw, for an opening statement.

Mr. Shaw, do you have an opening statement?

Mr. Shaw. Thank you, Mr. Chairman.

I, too, would like to welcome the witnesses that will be testifying this morning and who have taken time out of their busy schedules to be with us.

Today marks the 3d day of hearings on the Public Building Act which we will be concluding on Thursday when we consider the question of handicap accessibility.

As always, it is a pleasure to have representatives from the American Institute of Architects with us; who were here earlier this year testifying on the restoration of the west front of the Capitol.

For those of us supportive of the restoration, I think we owe a great deal of thanks to the AIA for their untiring and professional efforts which were largely responsible for the ultimate adoption of the restoration proposal.

It is indeed gratifying when driving into the office to see the scaffolding up and work underway on that majestic and historic building.

When reviewing the testimony submitted for today's hearing, I notice that the Administrative Office of the Courts have quite a few comments regarding their space needs and requirements and their relationship with the General Services Administration.

From observations of the court's activities in my own Federal Building in Fort Lauderdale, I have quite a few comments of my own which I could add regarding the court's needs.

Again, let me say Mr. Chairman, that I feel, as I am sure you do, that reforming the Public Buildings Act is a top priority of this subcommittee and one which I hope will be a priority of the full committee, as well.

Thank you, Mr. Chairman.

Mr. YOUNG. Thank you very much, Mr. Shaw.

At this time, the committee will hear from Mr. James E. Macklin, Executive Assistant Director, Administrative Office of the U.S. Courts who is accompanied by Mr. Allyn Z. Lite, clerk, U.S. District Court, District of New Jersey; and Mr. William Weller, Director, Legislative Affairs Office.

The full text of your prepared statement will appear in the record at this point.

[Statement referred to follows:]

STATEMENT OF JAMES E. MACKLIN, JR., EXECUTIVE ASSISTANT DIRECTOR, ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

Mr. Chairman and Members of the Subcommittee:

As the Executive Assistant Director of the Administrative Office of the United States Courts, I appear today to comment upon the relationship between the General Services Administration and the Judicial Branch. Accompanying me is William Weller, our Legislative Affairs Officer, and Allyn Lite, Clerk of the United States District Court for the District of New Jersey.

With the exception of the Supreme Court of the United States, space for the Judicial Branch — the United States courts and their relatively small group of supporting agencies — is provided, subject to Congressional oversight, by the General Services Administration. See 28 U.S.C. §462(f) and 40 U.S.C. §§490(h) and 601. My testimony today addresses three aspects of the judiciary's continuing relationship with the GSA: (1) the development and use of the United States Courts Design Guide; (2) the adequacy of services provided by GSA to the courts; and (3) the progress — or lack of progress — experienced in consolidating employees of the Administrative Office in a single comprehensive, and adequate, facility within the District of Columbia.

UNITED STATES COURTS DESIGN GUIDE

The United States Courts Design Guide establishes guidelines for the design, construction, remodeling, acquisition, and assignment of space for the courts. A copy of the current Guide has been provided to the Subcommittee.

The Guide is the ultimate result of a March 1971 Judicial Conference of the United States evaluation of problems associated with increasing housing costs for the Judicial Branch. The Conference then agreed that, with rare exceptions, the size of courtrooms could be reduced substantially. The Conference also then agreed that there was a compelling need for general concepts of design which would delineate reasonable and rational court needs, encourage efficient facility utilization, and insure necessary security for court officals and citizens who visit court facilities. The Chief Justice was authorized to appoint, and subsequently did appoint, a Conference "Committee on Court Facilities and Design" to work with the General Services Administration in developing those general concepts.

In response to recommendations presented by the Court Facilities and Design Committee, formulated with the cooperation and assistance of then-GSA Administrator Robert Kunzig, the Judicial Conference in 1971 and 1972 approved the following general principles:

(1) Where needed, a courthouse should be equipped with one or more "large trial" courtrooms (no more than 2,400 square feet), to be used by the judiciary for larger multiparty cases and ceremonial purposes (such as immigration proceedings) and to also be available for Congressional or Executive Branch field hearings;

(2) Each court facility should contain no more than a justifiable number of "standard trial" courtrooms (1,120 to 1,496 square feet);

(3) All courtrooms should be available on a case assignment basis to any judge, no single judge serving a multiple-judge court should have the exclusive use of any particular courtroom and, when not needed for adjudicatory proceedings, courtrooms should be available for any appropriate government usage;

(4) Each judge should be allocated no more than 1,600 square feet of space for himself, secretary, and law clerks, to be used as chambers, offices, and attorney conference space; and

(5) Each courtroom should be allocated no more than 1,300 square feet for adjunct facilities (e.g., jury deliberation rooms, holding cells for defendants in custody, witness rooms, etc.).

When the square footage allocation for "standard" courtrooms (item 2 supra) proved in fact to be inadequate, the Chief Justice, the Attorney General, and the GSA Administrator all agreed that courtroom sizes should be redesignated as "small" (1,120 square feet), "standard" (1,820 square feet), and "large" (2,400 square feet).

As years passed, and the judiciary grew in size in response to massive workload increases, we realized that policies adopted by the Conference would have to be published in a comprehensive document for use by space planners and architects. The United States Courts Design Guide was developed by the Administrative Office, in coordination with GSA, and published by GSA in 1979. In addition to the principles I have already cited, certain individual portions of the 1979 Guide have been specifically approved by the Judicial Conference. The September 1979 Conference, for example, approved — as interim guidelines — the Guide's space allocations for bankruptcy judges and magistrates, and the March 1981 Conference approved revised bankruptcy court guidelines and court reporter space allocations. However, since the Conference has never approved the Guide in its entirety, in March of 1984 the Conference will consider an updated United States Courts Design Guide, containing modifications to the 1979 version which have become necessary as a result of recently changed circumstances (alterations in internal court operating procedures, advancements in technology, etc.). We will provide the Subcommittee with a copy of that new document as soon as the Conference has approved it.

Our experience to date has proven the value of the Design Guide in responsibly reacting to unavoidable demands for more space as the judiciary has confronted unprecedented personnel growth during the past two decades. In 1960 the courts of appeals were authorized 68 judgeships; today they are authorized 132. In 1960 the district courts were authorized 226 judgeships; today they are authorized 515. We have made a consistent effort to request only minimal increases in authorized judgeships during the past two decades. Nevertheless, increasing workloads have required extensive increases, and legislation is now pending in this Congress which would authorize 24 additional courts of appeals judgeships and 51 additional district court judgeships requested by the Conference in September of 1982.

This Subcommittee, the Judiciary and Appropriations Committees, have heard testimony from Judicial Conference witnesses in recent years which we regrettably must admit has become a "litany" in the purest sense of the word. Our resources — people and facilities and equipment — have not kept pace with our growing workloads and our responsibility to serve those who, as litigants, come before our judges. Realistically, massive reallocations of resources have been required — and will continue to be required for years. The Design Guide is one tool which, used appropriately, will enhance our ability to effectively and efficiently allocate scarce space resources.

GSA AND THE COURTS

Almost all of the judiciary's space requirements arise in relation to court facilities which are located "beyond the beltway." Our personnel serve in facilities in more than 600 separate locations. In accordance with Congressional intent embodied in public law — and as a simple matter of common sense — the judiciary must rely upon GSA to provide accommodations for the courts. GSA is properly presumed to have the expertise we should rely upon routinely. However, because GSA has decentralized its field operations, and because its eleven regional offices appear to function in many ways almost completely autonomously, we too often see as much confusion as expertise.

If a court needs to expand or renovate facilities, that need is conveyed to the Administrative Office, which in turn files a request with the GSA regional office. Our experience has too frequently indicated that GSA responds to our requests slowly — and expensively. Initial cost estimates are often higher than anticipated — and too often higher than warranted. Modest projects (of perhaps $20,000) routinely take months to complete, medium sized projects routinely require one or more years, and large projects — such as the construction of new courthouses — regularly require many years from original request to occupancy. In our view many of the delays, and resulting high costs, are unjustified. Our judges often conclude that the delays are caused by incompetence or intransigence at the regional level of GSA, and we can do little to rebut such conclusions. Mr. Lite will tell you of his difficulties with GSA in Newark, New Jersey. Regrettably in recent years we have seen too many similar examples.

Are delays and resulting costs simply a reflection of incompetence? We do not believe they are. Given our perspective, we obviously do not have a comprehensive "overview." This Subcommittee holds the only position which provides such an overview. For whatever value our perceptions may provide in helping you bear that burden, let me very briefly outline our understanding of existing processes and associated problems.

Congress has wisely imposed statutory requirements upon construction projects, such as the requirement for approval of a prospectus for repairs, alterations, or leases in excess of $500,000. We fully recognize the need for such requirements, yet we too often see efforts to comply with them taking long periods of time — and the longer the time lag, the more problems seem to arise and the more costs seem to escalate. Our experience with one project in Madison, Wisconsin is a case in point. In 1972, we submitted to GSA our original requirements for a new courthouse — which was then intended to serve only one district court judge stationed in Madison. Not until 1976 was a prospectus for the project approved. Prior to construction, a number of events occurred: the original district court judge took senior status, but continued to carry a full caseload; a second district court judgeship was added by the Omnibus Judgeship Act of 1978 (Public Law 95-486); and the Bankruptcy Reform Act of 1978 (Public Law 95-598) was enacted. In aggregate, those developments rendered original space allocation plans obsolete and the approved prospectus inadequate. Securing a supplemental appropriation took several years. Construction did not begin until January of 1983. Not until July of next year will Madison get its new courthouse. That delay of 12 years from our original request may be explicable, but is it acceptable? We suggest that too often time is wasted because court needs are regarded by GSA offices as "low priority matters."

While we are not regularly encountering problems with all 11 regional offices, we are, we suspect, too often encountering confusion and delay. Although both the Executive and Judicial Branches are bound by the provisions of the Federal Property and Administrative Services Act of 1949, 40 U.S.C. §470 et. seq., the courts, as an independent branch of government, are entitled to have their special needs — which do vary significantly from those of the Executive Branch — accorded appropriate consideration. Regional office personnel too often refuse to recognize that our judges work in courthouses every day and know more about juror facilities than a GSA employee who is working on a court project for the first time. Since much of our square footage is taken up by courtrooms, jury rooms, and other such areas, any "per person" space limitation, such as the current GSA limit of 135 square feet per person, cannot be applied to judiciary personnel in the same manner as it is to executive agency personnel. Yet we regularly encounter regional office personnel who attempt to hold us to that standard.

Similarly, although we are fully supportive of your efforts to reduce the amount of government-occupied leased space — and have attempted to implement your objectives — we do not believe it is feasible to place "across-the-board restrictions" on the judiciary. Because we occupy space in more than 600 locations, government-owned space is often simply not available. The judiciary's space needs are inevitably expanding as judgeships and related supporting personnel increase in number in response to ever-increasing caseloads. Our growth pressures are real and unavoidable ones. We long ago lost our ability to "reorganize" space by placing ten clerks in a room designed for four.

From our perspective GSA appears to have too many cumbersome internal procedures — and rigid regulations — which substantially delay performance. GSA's Handbook for Public Buildings Service Operations, in an excerpt I am providing for the record, lists seventy six separate steps as administratively necessary in order to lease space. We cannot help but believe that that type of "red tape" explains why GSA's costs often appear to be ridiculously high. Another example of "red-tape" requirements taking on a life of their own occurred in our office several months ago, when Mr. Weller requested two additional office keys for new personnel. GSA's estimated cost for two keys was an unbelievable $56.16. When Mr. Weller determined that suitable keys could be acquired in the private sector for $3.00, he cancelled his request of GSA. We encounter problems of that sort every day on a far larger scale.

Having advised you of several of the reasons why, from our point of view, we are justifiably not satisfied with GSA's provision of services, let me assure you that we are fully cognizant of the fact that the judiciary is not entirely without fault in this business. If this were a court of equity, our lack of "clean hands" would have precluded my appearance today. Because we recognize that we share responsibility with GSA for insuring efficient and effective procedures, we have made efforts to identify the problems we create — and we have taken corrective action.

Only a few years ago, on a number of occasions, individual judges, frustrated by GSA's actions — or lack of action — issued contempt "show cause" orders against GSA personnel. In a July 24, 1981 letter the Chief Justice assured Administrator Carmen that he would personally see that any such "unacceptable" order would be "vacated forthwith." A copy of that July 24 letter has been submitted to you. Without citing specifics, I will simply report that, as he has demonstrated in other "administrative areas," the Chief Justice meant what he said.

In recent years allegations have arisen that court personnel had sought unwarranted change orders in ongoing renovation and alteration or new construction projects. Just last month, during its meeting here in Washington, the Judicial Conference approved a Memorandum of Understanding between the Administrative Office and GSA specifying procedures for processing court requests for proposed changes in approved and funded prospectus projects. Changes which will increase the design and/or construction cost by $100,000 or five percent of the original estimate, must now be processed as follows:

(1) Any change, regardless of cost, must be submitted to the Administrative Office. Where necessary, the Administrative Office will seek assistance from GSA to determine the cost impact, including costs associated with the potential design/construction delay, and the cost impact on other portions of the project which may not be court-related.

(2) When a proposed change exceeds the cost thresholds, the Administrative Office will refer the change to the appropriate circuit council for its review and approval/disapproval.

(3) If approved, the Adminstrative Office will forward certification of approval to the appropriate GSA regional administrator.

(4) GSA will then accomplish the certified changes as approved.

Fundamentally, we recognize our responsibility to help GSA perform its responsibilities — not impede performance. We are willing to examine our part in the process critically. We have demonstrated our willingness to take corrective action, where warranted, to eliminate those actions we may be taking — or not taking — which have made, or may make, GSA's task more difficult. Not surprisingly, we have several suggestions for reciprocal constructive action by GSA, and we believe this Subcommittee might be able to help us persuade GSA to positively respond to those suggestions.

GSA should examine its rules and procedures, streamline them and make them more flexible. While we would be the last to suggest that due diligence not be exercised when public monies are expended, we cannot believe that the amount of bureaucracy we routinely encounter in even minor repair or renovation projects undertaken by GSA cannot be reduced.

The GSA central office should exercise more control over activities in its regional offices. To some extent we have begun to work on that objective, but we have not yet achieved satisfactory results. Last summer, the Chief Justice and Administrator Carmen discussed the judiciary's space concerns. Mr. Carmen then designated a court liaison officer in the central office, and one in each regional office, to insure that court projects are handled expeditiously. If future practice lives up to the inherent promise in that arrangement, we may be able to substantially reduce delays and costs for both GSA and the courts.

The judiciary should be given greater authority to solve its own problems. At present, short of bringing the most egregious cases directly to the attention of Mr. Carmen or Congress, there is very little the Judicial Branch can realistically do. While the Director of the Administrative Office has the duty to "provide accommodations" for the courts and their component agencies (28 U.S.C. §604(12)), he does not have clear authority to secure any accommodations on his own. I have already explained that the courts often need space in communities in which government-owned buildings do not exist and in which they should not be constructed. One common-sense alternative under existing law is a limited delegation of authority to lease space. Historically, such delegations have not been liberally granted — and we are not arguing that they should be. In recent memory the judiciary has formally requested such a delegation only once, and it was denied. Given our status as an independent branch of government, our unique needs — and our record of reluctance in requesting delegations in the past — we believe that a limited exercise of leasing authority by the Director should be permitted unless GSA documents justification for denial. Congress certainly would have to expressly approve such an arrangement for the judiciary, and quite appropriately could hold us directly responsible to this Subcommittee for our actions. Today Congress has already given the Director the unequivocal power, subject to oversight or approval by the Judicial Conference of the United States, to "close accommodations" for the judiciary (28 U.S.C. §462). Our exercise of that authority in recent years has been reported to this Subcommittee, and has won the praise of the Judiciary and Appropriations Committees. We believe we have demonstrated our ability to exercise that authority responsibly — and a limited delegation of leasing authority could save a great deal of time and money. I can assure you that if the Director had such authority, it would be used sparingly. Should you choose to further consider the idea, our staff would, of course, be available to work with you in fashioning appropriate statutory language.

ADMINISTRATIVE OFFICE CONSOLIDATION

Before addressing directly current problems we are facing in relation to consolidating all Administrative Office employees in one facility, let me place that undertaking in its proper context. In December of last year the Director of the Administrative Office appeared before this Subcommittee during its consideration of proposals to rehabilitate Union Station. Mr. Foley then advised you that a centralized Judicial Branch facility in a building located adjacent to Union Station would meet our long-range needs. He also explained then very promising arrangements to meet our short-range needs by temporarily consolidating the Administrative Office in space located at 1750 Pennsylvania Avenue in downtown Washington. While the Administrative Office, in comparison to most federal governmental entities, is relatively small, our employees are currently housed in four different downtown Washington locations, and our printing plant is located in Forestville, Maryland. The geographical distribution of personnel impairs on a daily basis our ability to function efficiently and effectively.

In July of 1980 we asked GSA to help us consolidate in one downtown metropolitan location. Although negotiations between our staff and the GSA National Capitol Region Office followed our request, significant progress was not made until the GSA National Office and this Subcommittee became involved last year. Shortly after your involvement the National Capitol Region Office offered us approximately 115,000 square feet of consolidation space at 1750 Pennsylvania Avenue. That offer was tendered on October 1, 1982 and we accepted it within weeks. Assistance provided by members of your staff, especially by Nancy Vitali, transformed consolidation from a mere wish to a presumably achieveable undertaking. We genuinely appreciate the help this Subcommittee provided. Regrettably, I must report to you today a record of progress since last October which not only does not duplicate, but does not even approach, the progress we made last year with your help.

Within the past year employees of the Administrative Office have collectively devoted thousands of "man-hours" in an effort to perfect arrangements for consolidation at 1750 Pennsylvania Avenue. Record disposition surveys have required enormous amounts of time. The preparation, review, and modification of office arrangements have also required enormous amounts of time by employees who were required to set aside important daily work.

Our experiences in working with the GSA National Capital Region Office have been frustrating. We have received information from that office concerning progress on our plans for consolidation only after we have specifically and repeatedly requested it. We believe we have fulfilled all of our obligations expeditiously, but we believe other parties involved have failed to do so. Necessary "blue line layout prints," essential to determining renovation and alteration requirements, were transmitted by our office to the National Capital Region Office eight months ago. To our knowledge those proposals have not yet been finally approved.

Since May government leased space at the 1750 Pennsylvania Avenue location has been standing empty — at a cost to taxpayers of approximately $160,000 each month — and we still do not know when we may be able to commence occupying that space. The National Capital Region Office originally agreed to our phased-in occupancy commencing last month. Thereafter the date upon which increments of office space would be available to us was revised four times. The latest proposed schedule, dated September 21, 1983, would not permit the commencement of occupancy until mid-February at the earliest. To our knowledge GSA is currently still auditing our plans and has yet to complete negotiations with the building's thirty-plus owners for an extension of an existing lease which is scheduled to expire in January of 1985.

In summary, at the moment we have no way of knowing whether we will in fact be able to occupy the facility for a five-year period, no renovation or alteration construction has yet commenced, and — if past is prologue — no construction will commence early enough to permit our partial occupancy in mid-February. Yet we now face the necessity of having to award — no later than mid-November — a contract for installation of a sophisticated telephone system (PBAX) — or commence negotiation for that service all over again. I assure this Subcommittee that we are not awarding that contract under the existing circumstances. To do so would be patently irresponsible.

Finally, I must advise you that, because GSA has not been able to provide all of the space we originally requested at 1750 Pennsylvania Avenue — and because we have now concluded that there really is no reasonable expectation of expansion room becoming available — the facility is simply not adequate for our needs. We have concluded that we will find ourselves moving without "consolidating" enough to warrant the expense associated with the move.

One year ago we accepted the offer for space at 1750 Pennsylvania Avenue, confident that it would meet our temporary needs until a building convenient to the Supreme Court could be realized. Realistically that long-range solution to our problem remains years away. Regrettably, our anticipated short-range solution may also lie years away. We have experienced a level of frustration in the past 12 months which has led us to reexamine with care the possibility that existing statutory authority might permit the Director of the Administrative Office to unilaterally lease temporary space for purposes of our consolidation. In our General Counsel's opinion, existing statutory authority is not an adequate foundation for such action. Therefore, the Director has asked me to advise you today of our genuine belief that the conferral of such authority may constitute the only rational and reasonable method by which we may solve our short-term needs — and we are today formally asking this Subcommittee to assist us in obtaining that authorization.

CONCLUSION

In summary, Mr. Chairman, the Chief Justice, the Judicial Conference, and the Administrative Office have demonstrated their willingness to cooperate with GSA in providing adequate facilities for court personnel and citizens who have business with the courts. Yet we continue to encounter problems in the delivery of services. While the problems are not insurmountable, they are troublesome and expensive; and we cannot believe lasting solutions cannot be found.

Mr. YOUNG. Please proceed.

TESTIMONY OF JAMES E. MACKLIN, JR., EXECUTIVE ASSISTANT DIRECTOR, ADMINISTRATIVE OFFICE OF THE U.S. COURTS, ACCOMPANIED BY ALLYN Z. LITE, CLERK, U.S. DISTRICT COURT, DISTRICT OF NEW JERSEY; AND WILLIAM WELLER, LEGISLATIVE AFFAIRS OFFICER, ADMINISTRATIVE OFFICE OF THE U.S. COURTS

Mr. MACKLIN. Thank you, Mr. Chairman. Mr. Weller will join us shortly to assist in this presentation. As you have noted, I am accompanied by Mr. Allyn Lite, of the U.S. District Court for the District of New Jersey.

Mr. Chairman, I appreciate the opportunity to testify on behalf of the judiciary and to explain some of the relationships between the judiciary and the General Services Administration. I will cover three topics today.

First, a brief explanation about the U.S. Courts Design Guide, what it is, and the stage of development it has reached; second, the relationships between GSA and the courts themselves; and, last, a brief discussion of our attempts to consolidate the personnel of the Administrative Office in a single building here in Washington.

To begin with, I will explain the U.S. Courts Design Guide, which is an attempt to establish guidelines for the design, construction, remodeling, acquisition, and assignment of space to the courts.

By way of background, in 1971 and 1972, the Judicial Conference of the United States appointed a special committee of judges to study the needs of the courts for courtrooms and chambers for judges.

That committee worked for a couple of years, assisted by the late Judge Robert Kunzig who was then the Administrator of the General Services Administration. The General Services Administration constructed models of courtrooms, prepared plans, and assisted in many ways in the formulation of guidelines for space requirements of the courts.

On recommendation of that committee, the Judicial Conference eventually approved guidelines for the amount of space required for courtrooms. The objective was to reduce the size of courtrooms from what they had been in the past. The Judicial Conference approved large courtrooms of no more than 2,400 square feet for each district court, and a standard size courtroom guideline was set at 1,120 square feet to 1,496 square feet.

I might point out that subsequently then Attorney General Griffin Bell approached the Chief Justice of the United States and, on behalf of his U.S. attorneys and others, requested that the standard size courtroom be increased from 1,496 square feet to 1,820 square feet, because the larger numbers of defendants and attorneys involved in many of the criminal cases these days do, in fact, require a larger standard size courtroom. The Chief Justice on behalf of the Judicial Conference accepted that amendment to the guidelines.

At the same time that it approved space guidelines for courtrooms, the conference also approved guidelines for the chambers of district court judges. Subsequent to that time, and, again, working together, the General Services Administration and the Administrative Office prepared what has been entitled, "The United States Courts Design Guide." This guide incorporated the space guidelines approved by the Judicial Conference as well as a number of other items that have been reviewed by the Judicial Conference.

Eventually, input was received from the Justice Department on behalf of the U.S. Marshals Service as well as the U.S. attorneys' offices.

In May of 1979, the General Services Administration published the guide. I have provided a copy of that guide for your use.

Shortly before the guide was published, the latest omnibus judgeship bill was passed by the Congress, creating a large number of new judgeships. The space guide then became a very handy tool for the courts and GSA in determining the needs for court rooms and chamber space, as well as ancillary offices.

During the course of operation under this manual, it has become apparent that some changes have to be made. The Administrative Office, through various committees of the Judicial Conference, has sought input from the courts themselves and has made certain modifications to the guide. A revision of the guide will be presented to the Judicial Conference of the United States in March of 1984 for approval and, upon its approval, will be transmitted to GSA for its use.

Turning now to GSA and the courts, I would like to explain in one word the reaction of the judges and the people in the courts to the General Services Administration. I would have to say it is the word "frustrated." The time delays between our requests for services and the delivery of services by the General Services Administration are unconscionable. The amounts of money charged to the judiciary for construction projects that are carried on by the General Services Administration are also unconscionable.

As I indicated earlier, I have accompanying me Mr. Allyn Lite of the U.S. District Court for the District of New Jersey. I will ask him at the conclusion of my summary to address some of the problems faced in Newark, N.J., just one location. I have many examples, however, of other problems faced by the courts with the General Services Administration.

Now, to what do we attribute the slowness and the excessive costs?

To a certain extent, they may result because the national headquarters of the General Services Administration has delegated to its 11 regions almost complete autonomy. The processes for acquiring both leased space and new construction are detailed, voluminous, and time consuming.

For example, I have provided for the record an excerpt from the General Services Administration's Handbook for Public Buildings Service Operations. The excerpt I have provided lists 76 separate steps that must be accomplished before a building can be leased. These separate steps require such a long period of time to accomplish that the costs are multiplied.

Mr. Weller, who is accompanying me, recently needed two new keys for his own offices. We had hired two new employees. The estimate that GSA gave him for acquiring those two new keys was

$56.15. Instead, Mr. Weller went out and got the keys himself at a cost of $3.

I should point out that there has been a marked improvement on the part of GSA's headquarters here to attempt to assist the courts. Mr. Carmen has met with the Chief Justice on a number of occasions, and I know those two gentlemen are working very closely together. In addition Mr. Haase, in regard to the New Jersey project, has personally attempted to assist the courts in obtaining the necessary space, apparently all to no avail because the control lies with the regions.

We in the courts are not ourselves completely clean in this regard. You may have heard of some judges who have issued orders to show cause why particular employees of the General Services Administration should not be held in contempt, for example, for not keeping the courtroom cool enough during the summer months. I can assure you that the Chief Justice has taken steps to see that that does not occur. If it does occur, it will be stopped as soon as it occurs. He has written a letter to that effect to Administrator Carmen, a copy of which I have provided for the record.

We also have experienced new problems in recent times of change orders being issued by judges directly to contractors and these contractors obeying the change orders, thus running up the costs from what had been originally anticipated. The Judicial Conference has taken steps to prevent this from happening in the future by approving a memorandum of understanding that has been entered into between the Administrative Office and the General Services Administration. We continue to look at our own house to attempt to improve, and we ask that the GSA do the same.

Our view is that there are many time-consuming rules and procedures, and there needs to be an attempt to streamline them and make them more flexible. Moreover, we wish that there might be something we could do for the Judiciary to try to resolve the most severe problems since there is very little we have the power to do under the present rules.

One alternative that might be acceptable is a limited delegation of authority to lease space. If we have a judge in one of our 600 locations who needs only an office from which to operate, it would be handy if we had a delegation of authority to obtain it for him. Obviously, this leasing authority would be exercised sparingly and, if necessary, either under the supervision of this subcommittee or some other authority.

Turning now to the last item on my statement, I would like to discuss the Administrative Office's consolidation.

The Administrative Office has only about 500 people on its staff. They are presently located in five separate locations. We have been attempting for some time to consolidate them. We realize of course how much easier it is to control one's personnel if they are all at one location.

This subcommittee assisted the Administrative Office in this regard when, last December, a letter was written to the General Services Administration suggesting consolidation for the Administrative Office.

I must point out here that this matter was first brought to this subcommittee in December when the Director of the Administrative Office testified concerning the rehabilitation of Union Station. At that time, the discussion was raised of a permanent facility for the Administrative Office in space adjacent to Union Station. Of course, that is a long-term remedy—probably the best solution for the Administrative Office, and if there is any way in which this subcommittee can help us in that regard, I would request that you do so.

At any rate, I will today address the short-term remedy of consolidation of the Administrative Office in space located at 1750 Pennsylvania Avenue in downtown Washington. Shortly after your involvement, the National Capitol Region office offered us approximately 115,000 square feet of consolidation space at 1750 Pennsylvania Avenue. We accepted that offer within a few weeks, and we anticipated that we would be moving into that space very soon after the General Services Administration had completed its work. We had originally requested 120,000 square feet of occupiable space.

Now, I am not talking about common corridors and lobbies outside of elevator shafts. I am talking about usable office space. When we commenced planning for utilizable space at 1750, we learned that the 115,000 square feet would only be 102,000 square feet, and utilization of much of the space theoretically available for office occupancy would be rendered impossible as normal allocations of space for professional use.

By normal allocations of space, I do not mean *x* square feet for just one person for elaborate private offices. I am talking about minimizing alterations by not breaking down walls and such things as not moving electrical and telephone conduit lines and avoiding, wherever possible, alterations in heating and air-conditioning and ventilation systems.

Regrettably, in the course of trying to adjust our needs to the inadequate nature of the facility, we have encountered continuing delays in processing.

The National Capitol Region office has, in the last 8 months, delayed our commencement of occupancy date four times. We were originally scheduled to begin occupying the facility last month. On September 21, of this year, we were advised that our occupancy could not begin until mid-February. If our experience is any guide, our people will be lucky to move by next June.

That space is now under lease to the General Services Administration and the space is empty. It is costing the U.S. Government $160,000 a month.

In addition, GSA, despite requiring of us a 5-year commitment to occupy the building, is in no position to assure our occupancy for 5 years since the existing lease expires in January of 1985. As we were advised only last July, there is a real question as to whether or not an extension can be negotiated. Not only is GSA still auditing our plans for occupancy, but to our knowledge GSA is still negotiating with the building's 30-plus owners for the extension of that existing lease.

In my prepared statement, I mentioned extensive negotiations for telephone service, which, have now proved to be a waste of time. If we do not award our contract for that service by the middle of this month, we will have to begin the contracting process all over again. To award the contract under present conditions would be patently irresponsible, and we are not going to do it.

I fully expect, were we to continue along our present course, we could find ourselves a year or two from now no better off than we are today and, conceivably, far worse off.

Therefore, as noted in my prepared statement, we are seeking this committee's assistance to obtain authorization for the Director to lease space for our consolidation in the commercial market.

We firmly believe that had we taken that course of action last October, we would now be reporting to you a successful consolidation move at a cost savings to the taxpayers. Instead, I am here today describing a comedy of errors that has already cost an unconscionable amount of money and, realistically, will not constitute the short-range remedy we sought when this subcommittee staff rendered us assistance just 1 year ago.

Now, with your permission, I would like to ask Mr. Allyn Lite to describe what has or has not gone on in the New York-New Jersey area.

Mr. YOUNG. Thank you very much, Mr. Macklin.

We will now here from Mr. Lite who is the clerk of the U.S. District Court for the District of New Jersey. We would appreciate your comments and you may proceed in any fashion that you like.

Mr. LITE. Mr. Chairman, I would like to thank the committee for allowing me to appear here today to outline some of the problems we have had in New Jersey with the General Services Administration.

I had a long and involved discussion with my chief judge before I came here, and we discussed whether or not my appearance here would impinge upon future dealings with the General Services Administration and my court. It was determined that all bridges that we had ever had with GSA had been severed so long ago that I might as well appear here and tell you exactly what has happened. Whether or not we can construct any new bridges in the future depends on GSA's ability to construct.

I am going to address two things. When I spoke with Mr. Macklin, he said he wanted me to talk primarily about the problems with moving the Bankruptcy Court out of its existing home in the U.S. Post Office and Courthouse Building in Newark to more suitable space, and also to talk about the GSA's overcharges. I would like to address the latter first and give you four little horror stories about the GSA and how they deal with the courts—in many ways perhaps as dramatic as the $56 charge for two keys.

Some time ago we contacted GSA and asked them if they could give us some insight and an estimate of how much it would cost to add four seats to a jury box in a district courtroom.

A jury box had 12 seats; it needed to be expanded to include 16 seats.

GSA charged us $1,200 for an estimate. It took 1 year to provide the estimate. At the end of the year, they presented us with a reimbursable work authorization and a proposal to do the work in the amount of $33,000.

This was to add four seats to a jury box.

When I responded to the GSA court liaison from region 2 in New York, I told him my parents' house did not cost $33,000. He told me it made no difference; that was the cost of expanding the jury box. We, obviously, did not proceed with their proposal.

We have been trying to alter space in the post office and courthouse building as needs have demanded. We are not the major tenant in that building. It is a Postal Service building.

Our second problem arose when we needed to modify the last two contiguous rooms in the building to provide a small judge's chamber. The need arose when we had a judge take senior status, and the appointment of a new judge was imminent. When we went to GSA they advised us that they did not have anybody who could spend the time to work on our project and asked if we could possibly have it done locally. We were delighted because we had so many problems in dealing with region 2 before, that we went to our postmaster who is our landlord. Whether or not this committee has ever heard anything nice said about the Postal Service, I don't know, but I could tell you many nice things about the Postal Service in New York and New Jersey.

They have gone out of their way to help us. As our landlord, Postmaster Benucci said he would be glad to utilize his personnel to modify the space as long as he could be reimbursed by the administrative office of the courts. We contacted the administrative office and they said to get a proposal and proceed. The Postal Service provided us with an enormously detailed proposal on how to alter this space, detailed down to how much the washers would cost for the new toilets, at 75 cents apiece.

This is in contrast to what the GSA provides: "to modify existing space—*x* number of dollars"—a flat fee. The price on this project was $11,874 from the Postal Service.

We asked GSA for a written delegation of authority to allow the Postal Service to modify the space at that price. They said they wanted to see the written proposal. We gave them the written proposal. After 10 days, we heard nothing. I spoke to the court liaison officer in New York and asked if there was a problem. He told me there was a problem. When I asked him what it was, he said they sent the written proposal for the $11,000 and change to the repair and alteration branch of the region. The repair and alteration branch said it did not cost enough money to do the project.

When I asked him to repeat that and whether he really meant to tell me the U.S. Postal Service was not charging the judicial branch of the Government enough to do the project, he said that was correct. I asked him if he could please respond to that in writing.

I am still waiting for the letter.

When I spoke to my chief judge about it, he told me if the letter comes in to that effect, it will be turned over to the U.S. attorney's office for a grand jury investigation.

Two other overcharge problems. GSA does work for the courts in New Jersey and they bill us for the time that is spent. We keep meticulous records of when GSA staff is in the building to do the work. I have been told informally by GSA locally in Newark, that they never bill for less than half a day, no matter how much time it takes to do the work.

When that happens, I don't pay the bill.

The last point on overcharging, because of backlog in our courts, we have some judges who wish to sit on holidays and on Saturdays if they are in the middle of a protracted trial or if they have a sequestered jury.

I had a call from a judge this morning who wants to sit on November 11, a national holiday. We have been advised that for one member of the GSA staff to enter the courthouse in Trenton, N.J., to turn on the light and heat, it costs $238.

These probably seem like piddling amounts of money to a Congress that has to deal with enormous sums, but we have to try to save wherever we can, and sometimes it seems silly to have to deal with some of the overcharges we receive.

Mr. Macklin said if he could describe in a word the court's feelings about the GSA, the word would be "frustration." I cannot concur more. I am here today because, very frankly, I am terribly frustrated. I am particularly frustrated about the fact that if I look at it optimistically, it will take 7 years to move the Bankruptcy Court across the street from the U.S. courthouse to the Peter Rodino Federal Building in Newark.

The bankruptcy clerk's office now is presently located in approximately 1,050 square feet. The office houses 19 deputy clerks, for an average of 55 square feet per person, or somewhat less than a cell in most Federal prisons. There is only seating for 14 people in the room; therefore, 5 members of the staff do without desks. They work in various empty jury rooms, in the hallway, and in storage closets and other places, as they become available.

I do not indulge in hyperbole. There are pending files stored in the filing cabinets in public corridors in this building. Deputy court clerks must leave their desks, move their seats and desks in order to open other filing cabinets.

Law clerks share two offices with the bankruptcy judges. The judges' secretaries sit at desks in the clerk's office. There is no security for open files or for opinions being typed by judges' secretaries. It is quite obvious that the OSHA could find violations in the lack of space in this office.

At the present time, New Jersey has the fifth or sixth largest volume of bankruptcy cases in the United States.

In January of 1984, we will celebrate the sixth anniversary of the letter in which my predecessor requested the Administrative Office to secure additional space so that a crisis in the bankruptcy court could be avoided. Within a month, the bankruptcy court judges had accepted the Administrative Office's suggestion that 5,000 square feet of commercial office space be leased because of a perceived need, after the passage of the 1978 bankruptcy bill, to keep the courts together.

The district court judges concurred in that assessment at that time. However, by May of 1978, the district court recommended the bankruptcy judges be moved to commercial space and the Administrative Office requested 6,400 square feet in a building in downtown Newark.

However, GSA inspected the then existing space and the space in which the court still exists, and found it to be sufficient.

By September of 1979, GSA changed its mind, agreed to seek commercial space, and advertised for 9,000 square feet of space. There were no responses to the GSA ad. By October of 1979, the Administrative Office proposed to relocate the bankruptcy court across the street in the Peter Rodino Federal Building. Congressman Rodino then contacted Alan Greenberg, the Director of GSA's Real Estate Division in region 2 in New York, and was assured that all efforts toward the relocation would be undertaken. Congressman Rodino specifically asked Mr. Greenberg to keep him advised as to the status of the project.

It is my understanding that Congressman Rodino has never been so advised.

By early 1980, GSA thought they found another solution. They requested a study of the possibility of constructing two to three additional floors onto the U.S. Courthouse and Post Office Building. The Postal Service did not support the move because, No. 1, it was antithetical to the landmark status rendered to that building and, No. 2, the court rejected it because it would be enormously disruptive to at least half of the court proceedings if they were to add the addition. Moreover, it was rejected by all parties because it was going to cost $20 million.

By mid-1980, the clerk of the bankruptcy court went out to investigate the availability of commercial space. The real estate agents at that time advised him GSA was planning to relocate agencies outside of the Rodino Building to other commercial space. GSA, however, would not advise us which agencies were to move and what the time sequence would be.

In June of 1981, the clerk of the court met with Mr. Foley, Director of the Administrative Office, and with Mr. Macklin, to emphasize the seriousness of the problem. The clerk was then notified that plans were underway to relocate the court on the 16th floor of the Rodino Building. However, the clerk was then advised by GSA that there was no space available in that building until January of 1982, and if space were vacated, it would take a minimum of 6 months to renovate and then relocate the court.

By August, 2 months later, the AO submitted blue line drawings, but a dispute arose because the Bankruptcy Court was not allocated the amount of space GSA originally requested; they needed an additional 500 feet of space occupied by the National Labor Relations Board, which refused to move from the space even though it contained just some copy equipment and files. When we asked GSA if they could urge the NLRB to move in order to keep the courts together, they said that the NLRB had its problems, and couldn't do so. The Small Business Administration which inhabited the 16th floor, where this domino game was supposed to go on the checkerboard, would not move until 1982, and negotiations continued for the extra 500 feet.

Finally, in early 1982, GSA suggested the 16th floor was not feasible and that the 7th floor should be considered.

By June 21, 1982, Chief Judge Fisher of the District of New Jersey had had it. This is a man who does not irritate easily, but he asked the Regional Director of region 2, Mr. Gerald Turetsky, to come to a meeting in his chambers to discuss some of these problems.

Mr. Turetsky came with an entourage of approximately seven staff members. At that time, Mr. Turetsky promised they would expedite the solution and everybody promised to move forward as quickly as possible.

On that same day, the Administrative Office provided finalized blue line drawings for space on the 7th floor. Six months later, in December of 1982, Mr. Turetsky advised it would take 18 to 24 months before the project could be completed.

By 1983, the clerk of the Bankruptcy Court again sought commercial space and found some in a newly constructed building which was built for New Jersey Bell. New Jersey Bell was interested in leasing half of a floor in that building to the Bankruptcy Court. The Space and Facilities Branch of the Administrative Office requested that GSA move as quickly as possible to investigate the possibility of the New Jersey Bell Building, and on Valentine's Day of this past year, February 14, I met with Nancy Vitali of this committee, the clerk of the Bankruptcy Court, Mr. Macklin representing the Administrative Office, Commissioner Haase and members of his staff, and representatives of region 2, in the Public Works Committee Hearing Room, to discuss what should be done.

Mr. Haase promised to expedite the solution and directed the representatives of region 2 to look again at commercial space, including the New Jersey Bell Building, and to solicit bids as quickly as possible. He also expressed an interest in the possibility of a sole source lease for the New Jersey Bell space. Everyone at the meeting concurred there was no other feasible space in the city of Newark. Mr. Haase directed region 2 to move as rapidly as possible.

We provided GSA with the names of the New Jersey Bell contacts the same day and asked them to call directly. Two weeks later there was a meeting in New Jersey, again with representatives of Mr. Haase's office and region 2 representatives, at which time the court pleaded with GSA to move, because we were going to lose the New Jersey Bell space unless they moved quickly. We were told by region 2's representatives that they felt that the Rodino Building was probably a better solution. This is after Mr. Haase had directed them to move on the New Jersey Bell space.

Two weeks later, I advised Ms. Vitali that, although Mr. Haase had directed region 2 to solicit 11,000 square feet of space nearly a month before, no ad had yet appeared. I think it was a call from Ms. Vitali that got the ad to appear 2 days later.

I don't like having to call members of this committee staff in order to have GSA staff in region 2 do their job.

By June 30, New Jersey Bell withdrew its offer because we were too late.

Representatives from Mr. Haase's office and region 2 came with us to look at those buildings which did respond to the ad for 11,000 square feet. There were four buildings.

One was a building in which GSA had nine floors, nearly all of which had been committed. Therefore, there was no point in doing much other than looking at it and realizing we couldn't have it.

Another building was a building at 744 Broad Street in which I practiced law for 2 years, which is known in New Jersey as a "sinking ship." It is a building where everyone is moving out because the building is not maintained and the space was not good space.

The third space I must tell you about. They said it was at 760 Broad Street. I worked at 744 Broad Street and I was unaware there was a 760 Broad Street in Newark.

However, I was assured by region 2 that there was. We found 760 Broad Street. The address was above the sign for the local Kentucky Fried Chicken Restaurant. To get to the space, you entered the Kentucky Fried Chicken Restaurant, made a right turn at the salad bar and I went up the stairs. That is where they wanted to locate a U.S. court.

When GSA Region 2 wrote their analysis of their meeting in Newark that day, they stated that the court found the space unsatisfactory. That was not true. We found the space abominable. It was so abominable that the representatives of GSA from Washington were embarrassed and would not go up the stairs.

The last space was the Rodino Building, which is the space that GSA has been pushing for at least 5 years.

We are now advised that drawings for the Rodino Building space will be completed by November 30, with construction contracts to be awarded by February 28. It is inconceivable to me that it takes 90 days to award those contracts when this is supposed to be a priority project, and construction is to be completed by the end of 1984, which will mean a total of 7 years. And I am not optimistic about the December 1984, date.

I am indeed frustrated. As Mr. Macklin said, "frustration" is the word in dealing with GSA.

Mr. Macklin also said he believes the problem—and I concur—is not the Central Office of GSA. I have dealt with the Central Office as a result of help from this committee staff. They have been straightforward with me. They have been honest, and they have worked diligently, I think, to achieve what Mr. Haase has asked them to do, which is to expedite this procedure. They have run into a stonewall at the Hudson River. The stonewall is region 2 of GSA, which does not believe that anything west of the Foley Square Courthouse in downtown Manhattan warrants their attention.

When we asked region 2 to come and do work in our courthouse, and we are mandated to call them, they tell us that they are busy in Foley Square. I have reminded them on numerous occasions that the judges in the district of New Jersey are also appointed for life by the President of the United States, and they should have some of the same rights that the judges in the southern district of New York have in getting work done.

We have had meetings with the Regional Administrators from Mr. Turetsky through Mr. Diamond, the current Regional Administrator. Mr. Turetsky promised and never delivered. Likewise, Mr. Diamond promised and never delivered.

When Mr. Diamond came out and looked at the Bankruptcy Court's space, he wrote back the following, and I will read you one line from the letter:

> I have toured your space in the U.S. Post Office Courthouse in Newark, as I have previously done in Trenton and Camden. While the space occupied is tight, working conditions do not appear intolerable, and certainly appear to be well-maintained.

Apparently, the standard before GSA will do any work is the standard of intolerable space.

The only progress this project has made from day one has been through self-help through the district and Bankruptcy Court and through the assistance of this committee. Instead of GSA helping, they have been obstructionists. All information on commercial space was developed locally. GSA never found any space for us other than the space upstairs in the Kentucky Fried Chicken Restaurant. The courts have even, as far as possible, tried to accommodate the GSA on the project by moving into the Rodino Building. We have accepted 9-foot ceilings. We have accepted less than the best configuration of space. We have waived slab-to-slab construction.

When GSA asked the court, in order to save money, to give up private toilets for the bankruptcy judges, we finally said no. No matter how the court has compromised and bent on this project, GSA continues to extend the completion time rather than reducing it.

The clerk of the Bankruptcy Court and I have looked for other commercial space. Because of GSA's lack of concern and failure to give any priority to the project, we lost the best possible space in the New Jersey Bell Building.

My chief judge does not like to exercise any power outside of his courtroom, but he does have some friends. One of his friends is the general counsel of the Prudential Life Insurance Co., whose world headquarters is in New Jersey. Prudential is also the largest single owner of real estate in the city of Newark. The chief judge asked Prudential for their help in finding commercial space for the Bankruptcy Court in Newark.

I met with a high official in the Prudential Insurance Co. about the need for space. He commiserated with the plight of the court, but when asked if we could have space in their brand new 18-story building which was to be completed by January of this year—and I spoke to him 9 months ago when space was available—he said that they could not provide it for us. When I asked him why, he said something which he said he would never admit on the record, but I am going to tell this committee. He said that Prudential will not deal with the General Services Administration. When I asked why, he said that because everytime Prudential has leased space in any of their buildings, the GSA space has not been maintained.

Moreover, when leases have been up, and they have asked GSA to vacate, GSA has refused to vacate, in some cases, for periods as long as 2 years.

When I asked further about this, he said that Prudential, as the landlord, did not want to padlock the door. He smiled and said, "We are a public company with a public face. How would it look if we put GSA out on the street?"

I think it is the most stinging indictment possible of the General Services Administration that a public company with a public face, one of the largest corporations in the country and the largest single owner of real estate in Newark, will not deal with the Government's landlord to lease space.

I think that GSA has a problem, as Mr. Macklin said, in that they are autonomous within the regions. I think that the problem is that they do not want to know about what happens outside of their own general area, in this case region 2, where perhaps the regional administrator is most concerned, and that is in the city of New York.

There is one last point I want to make to you, and I thank you for your indulgence in giving me this much time; perhaps my frustration is showing through. My last point is the lack of foresight on the part of GSA.

More than 2 years ago we advised GSA that the Judicial Conference of the United States had authorized three more judgeships for New Jersey, of which two would be coming to Newark. There are bills pending in this Congress to accomplish this. We are hopeful that the bills will pass and New Jersey will get its three new judgeships.

GSA told us after the bill passes, at that time they will do a survey of all of the needs of the court in New Jersey and let us know what they can do about space for us. It would seem to me they would be better off doing that beforehand than after the fact, because I do not think we can wait for 7 years for judges chambers and courtrooms for the district court, as well.

I thank you for your time.

Mr. YOUNG. Thank you very much.

Mr. Weller, we have to go to the floor to cast some votes.

Mr. MACKLIN. We will be happy to answer any questions you have.

Mr. Weller does not have a statement to make.

Mr. YOUNG. Apparently there is going to be a series of votes almost in a row.

I think Mr. Shaw and I clearly understand the situation as far as the courts and GSA are concerned.

I wonder if the staff submits questions to you, could you get the answers back in a relatively short time, so that we can make this a part of the record, as we try to look into the court situation.

Mr. MACKLIN. Yes, sir.

Mr. YOUNG. Mr. Clarke, does that sound reasonable to you?

Mr. CLARKE. I think it is a very good idea.

Mr. YOUNG. So, without objection, the staff will submit some questions to you gentlemen, and we would appreciate your replies as soon as you possibly can, and then I can assure you that, after your testimony today, the committee will take a very, very close look at the problems that you have brought to our attention.

Mr. SHAW. Mr. Chairman, Mr. Lite has made some very pointed accusations in his testimony. Some of these questions should be answered by the GSA with respect to the price of keys and the price of chairs in a jury box. Some of these, perhaps, can be explained and maybe some cannot be explained.

I think the committee should send Mr. Lite's testimony to GSA and ask for a point-by-point response and perhaps invite them to appear before this committee to respond to various questions that have been asked.

If this is a normal situation and things are as Mr. Lite has described them, then the task of this committee is greater than I thought it was.

Mr. YOUNG. I have no objection.

Thank you, Mr. Lite; thank you, Mr. Shaw.

The committee will stand in recess for the time we need to vote on these additional bills.

Thank you, gentlemen, all, very much.

[Brief recess.]

[Subsequent to the hearing, supplemental questions were submitted to Messrs. Macklin, Lite, and Weller. The questions and responses follow:]

[Received from Administrative Office of the United States Courts, William James Weller, Legislative Affairs Officer]

Questions directed to Mr. Macklin are numbered 1-17. Among them, questions 9 and 13 were filed by Congressman Shaw, by letter dated November 9, 1983. Questions directed to Mr. Weller are numbered 18-20, and questions directed to Mr. Lite are numbered 21-23. All answers reflect information available to us through December 22, 1983. For example, question number 4, concerning our plans to request a delegation of leasing authority for our consolidation, is partially answered by inclusion of a December 19 letter from Mr. Foley to Mr. Carmen, in which we formally requested the delegation of authority; and question number 17, concerning facilities in Santa Ana, reflects information we received on December 22, 1983.

QUESTION NO. 1: Mr. Macklin, how much space did you originally need at 1750 Pennsylvania Avenue, and why is the building now too small to accommodate your needs?

ANSWER: We orginally requested 120,000 square feet of usable space, in contemplation of consolidating most of our units and one of the Federal Judicial Center's units, and office space required by the Multidistrict Litigation Panel, in a single facility. When we were advised that the 1750 Pennsylvania Avenue facility would provide 115,000 usable square feet, we decided that our original objectives could probably be revised to at least consolidate most of our own units. When we actually began planning for occupancy, we discovered that the facility did not consist of 115,000 usable square feet, but rather 102,000 usable square feet. We spent a great deal of effort and a great deal of time trying to compensate for the "lost" or "never existent" 18,000 usable square feet. In the process we realized that our needs could be revised only to a certain extent before the solution to one problem generated two new problems. Given the layout of usable space at 1750 Pennsylvania Avenue, we found it impossible to fashion a truly efficient allocation of space. We also realized that the least inefficient alternatives would require expensive alterations. The more we tried to fashion a workable arrangement, the more we realized that the whistle was not worth the penny. We eventually concluded that we were simply trading our existing problems, due to a lack of consolidation, for a new set of problems, directly attributable to the usable square footage inadequacies of the 1750 Pennsylvania Avenue facility. Finally, we were informed that there was no guarantee whatsoever of legitimate expansion room, which would probably result in a continuing and increasing reliance on satellite facilities in the future.

QUESTION NO. 2: Mr. Macklin, could you elaborate on why G.S.A. would offer the Administrative Office space at 1750 Pennsylvania when the lease is scheduled to expire in January of 1985, and there is no guarantee that the lessor will agree to an extension, or if he does so, perhaps at a high rate since expensive alterations will have to be done in the building to accommodate you and your new sophisticated telephone system?

ANSWER: We really are not able to answer that question, because we have not yet received an explanation from G.S.A. for their delay in negotiating. We only learned of the delay in negotiation in late July of 1983, and our apprehensions concerning this project immediately increased. When we originally started down this road we realized that revising our space allocations would entail a great deal of work. One problem after another arose, as the extent to which the amount of usable square footage was inadequate became increasingly obvious. In retrospect, I think we are relieved that no binding agreements were made. As we have become more cognizant of the extent to which the facility in fact cannot be made adequate — in spite of our continuing sacrifices of parts of our original objective — we have decided that the lack of binding lease agreements will permit the termination of a hopeless exercise.

QUESTION NO. 3: Mr. Macklin, how long do you anticipate staying in a new consolidated location?

ANSWER: We originally anticipated, and still anticipate, consolidating in one "short-term" location for the period of time necessary to obtain permanent facilities, as discussed before this subcommittee in hearings in December of 1982. That is a principal reason why the 1750 Pennsylvania Avenue facility is inadequate. Not only are we unable to accommodate our reasonable consolidation needs there now, but there is literally no prospect of attaining any expansion space. We know we will need a limited amount of expansion room in the future. If Congress acts to expand our duties significantly, as it has repeatedly in the past decade, we may need significant amounts of additional space before a permanent facility can be completed at Union Station or some other situs.

QUESTION NO. 4: Mr. Macklin, with respect to consolidated housing for the Administrative Office of the Courts, I note you requested GSA to assist you in July of 1980, and as of today, you feel a short range solution for consolidation lies years away. As such, you are requesting the subcommittee to assist you in obtaining a delegation of authority from G.S.A. Have you requested such a delegation from G.S.A. to date?

ANSWER: By letter of December 19, 1983, from Director Foley to Administrator Carmen, we requested a delegation of authority to procure accommodations for the Administrative Office, the Federal Judicial Center, and the Judicial Panel on Multidistrict Litigation. In that letter, a copy of which is attached, we explain in full why we believe a delegation is appropriate in this case.

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS
WASHINGTON, D.C. 20544

WILLIAM E. FOLEY
DIRECTOR

JOSEPH F. SPANIOL, JR.
DEPUTY DIRECTOR

December 19, 1983

Honorable Gerald P. Carmen
Administrator of General Services
18th & F Streets, N. W., Rm. 6137
Washington, D. C. 20405

Dear Mr. Carmen:

At the direction of the Chief Justice that I seek adequate quarters for support agencies of the Judicial Branch, I am writing to request a delegation of authority from the General Services Administration so that I may directly procure accommodations for the Administrative Office of the United States Courts, the Federal Judicial Center, and the Judicial Panel on Multidistrict Litigation. I wish to emphasize that we are filing this request only after a lengthy but ultimately unsuccessful effort to achieve our objectives by working with the National Capital Region office.

Currently, our three agencies occupy offices in five different locations in the District of Columbia. This geographical distribution of personnel impairs on a daily basis our ability to function efficiently and effectively. We are especially frustrated because, in comparison to most Federal governmental entities, our agencies are small and could easily be housed in a single office building.

Pursuant to my statutory duty to provide accommodations for agencies in the judicial branch, my staff has for several years been working with your National Capital Region office to redress this obvious inefficiency by consolidating all offices in one downtown metropolitan location. Because there is no suitable Federal space in GSA's inventory, GSA has attempted to provide us accommodations in an existing leasehold in a privately-owned building. Unfortunately, these efforts have proved completely unsuccessful.

At this time, three and one-half years has elapsed since our consolidation effort began, but we are still in our original situation. While we could ask the Region to undertake the search for new accommodations once again, we have concluded that to do so would unwisely ignore the lessons of our recent experience, which I set out below. We have, therefore, decided to ask you to issue a delegation of leasing authority pursuant to 40 U.S.C. § 486(d), so that we may secure new accommodations directly. I understand and respect your general reluctance to approve such delegations, but this is a unique situation, and we seek the delegation only as a last resort.

In this regard, I note that as an equal and independent branch of the United States Government, the judiciary and its supporting agencies are entitled to a presumption of competency consistent with the authority conferred in 28 U.S.C. § 462. Where, as here, the normal procurement system breaks down, an appropriate delegation of authority to achieve the efficient and expeditious transaction of business of the third branch of Government is fully warranted. Even if you would not be inclined to grant a delegation to an executive branch agency in our situation, it is our opinion that the judicial branch is entitled to--and has earned--favorable action on this request.

A brief recitation of the relevant events will, we hope, explain both our sense of frustration, and the reasons why we feel a delegation of authority is now appropriate.

We first requested GSA's assistance in achieving a consolidation in July 1980. After preliminary study and negotiation, we submitted, in May of 1981, a formal request for 120,000 square feet of space. After helpful intercession by the GSA national office and the House Subcommittee on Public Buildings and Grounds, the National Capital Region eventually (in October 1982) offered us approximately 115,000 square feet of space at 1750 Pennsylvania Avenue N. W. Although that quantity of space was less than we originally requested, we accepted the offer promptly.

We then began a long series of tasks necessary to prepare for the move. I appointed senior A.O. personnel to supervise the overall relocation. We opened negotiations and solicited bids for a sophisticated new PBAX telephone system. Individual divisions and branches undertook time-consuming record disposition surveys. As a result of the conscientious efforts of my staff, we were able to submit final blue-line prints reflecting the arrangement of offices and renovation and alteration requirements within four months (by late February of 1983).

The National Capital Region office in turn advised us that execution of our plans would take more than a year, and that actual occupancy could begin no earlier than April 15, 1984. We questioned many of the time periods listed in the proposed completion schedule, particularly those relating to the performance of an audit and the negotiation and award of a construction contract. After a two-month delay, two interim revisions, and intervention by the national office, the Region finally acknowledged that the schedule could be accelerated, and prepared a "final" plan for occupancy to take place between October 15, 1983 and January 15, 1984.

Several significant developments took place during this period. The Panel on Multidistrict Litigation and the Federal Judicial Center were withdrawn from the move because they could not reasonably be accommodated in the space offered. Due to the impending expiration of the Government's lease at 1750 Pennsylvania Avenue on January 31, 1985, the Region informed us that they would not pursue negotiations for a succeeding lease unless we certified a continuing need for the accommodations for five years. While concerned about the long-term adequacy of this space, we nevertheless provided the requested commitment within two weeks. Only thereafter did we learn to our chagrin that the total amount of usable space available was only 102,000 square feet, rather than the 115,000 square feet we had been offered. Despite these and numerous other problems, we did not retract our commitment. Throughout the spring and summer of this year we operated on the assumption that the proposed occupancy schedule was firm, and we tried to find a reasonable way to make the best of an inadequate facility.

Unfortunately, events have now proven that the completion schedule, as we suspected, was hopelessly inaccurate. The lessor's approval of the renovations was not received within 30 days as anticipated, but instead required several months. Similarly, the National Capital Region office agreed to perform the necessary internal audit within 30 days, but we have learned that more than one audit is required and that not all of these have been completed or even commenced. Reflective of these and other delays, the Region this September informed us that occupancy would have to be postponed until February 1984. Two months later, on November 21, that office advised that the actual delay would be even longer, and that phased occupancy could not commence until May 15, 1984. If past is prologue, we have no reason to believe this estimate is any more accurate than its predecessors.

We experienced similar frustrations in our efforts to accommodate our needs within 102,000 square feet of usable space. Despite every effort to reduce our requirements, such as excluding the Federal Judicial Center and the Panel on Multidistrict Litigation, we have concluded that our consolidation simply cannot be achieved in the available usable space. The building will not even fulfill all our present needs, much less serve as the consolidated headquarters for judicial support agencies over the next five years. Furthermore, since the current lease expires in January 1985, the expense of our move will be justified if, and only if, an appropriate lease extension is obtained. No such extension has yet been negotiated.

Compounding the regrettable fact that virtually all of the Government's space at 1750 Pennsylvania Avenue has stood vacant since May 1983, at a cost to the taxpayers of approximately $150,000 per month, is the substantial expenditure of personnel time by employees of my agency. Easily one million dollars, when salaries paid our employees are considered, of Government funds has been expended on this series of confusing developments.

In light of the pattern of delays, the inadequacy of the proffered accommodations, and the continued waste of Federal funds, on December 7 I instructed the National Capital Region to terminate planning for our occupancy of 1750 Pennsylvania Avenue.

The factual record that I have outlined amply demonstrates the good faith with which we have attempted to work within the normal procurement system. We have given the National Capital Region every opportunity to perform its assigned statutory role, and in no way have we attempted to circumvent routine procedures. We have devoted thousands of man-hours to planning efforts, and we have set aside much important daily work in order to do so. Nonetheless, the Region has proven unable to produce satisfactory results. While I do not intend to disparage their motives, and while I concede that they are not responsible for all of the delays in this project, I am firmly of the view that their continued involvement in this project would be futile and inefficient. After the passage of so much time and the waste of so much money, I believe that the best, if not the only, chance for expeditiously and economically accomplishing our consolidation lies in doing the work ourselves.

I regret that the situation has deteriorated to the point that we feel compelled to submit this request for independent leasing authority, and I wish to assure you that the judiciary will continue to cooperate with GSA in other procurement activities whenever we can do so. In this particular case, however, our need for a delegation of leasing authority is acute, and our confidence in our ability to exercise the authority responsibly is warranted. I trust I can rely on your prompt and positive response to our request.

Sincerely,

William E. Foley
Director

cc: Honorable Warren E. Burger
Mr. William F. Madison

QUESTION NO. 5: Mr. Macklin, when did the Administrative Office request a delegation of leasing authority from G.S.A. and why was it rejected?

ANSWER: On July 11, 1983, the Director requested a delegation of leasing authority so that he could directly provide accommodations for the United States Probation Office serving the district court in the District of Columbia. This request was filed at the suggestion of the Acting Director of the National Capital Region's Real Estate Division because, over the course of eight months, GSA had been unable to procure suitable space. In fact, GSA had to cancel two potentially promising arrangements at the last minute. Time was also a factor because the lease on the Probation Office's current space will expire in May, 1984. Nonetheless on August 5, the Acting Administrator of GSA denied our request, asserting that no "significant advantage" would accrue to the Government from such a delegation. To this day, arrangements for new space still have not been made.

Furthermore, on October 12, 1983, we suggested to GSA's Region 5 office in Chicago that we take responsibility for entering into a short-term lease with a United States bankruptcy judge in Eau Claire, Wisconsin. In this unusual situation the judge who had been serving as a part-time officer, assumed full-time status on October 1, 1983. He immediately became entitled to federal accommodations, but quarters in the local federal building will not be available for approximately one year pending renovation. Absolutely no other private or public space is available. The only practical solution is to continue to house the judge in his current law offices. Regrettably the judge owns that building and there would be the appearance of a conflict in interest in the Government contracting with one of its own employees. Because we felt it would be unfair to ask GSA to put itself in that potentially compromising situation, we offered to enter into the lease directly. From conversations with GSA representatives, we are optimistic that this arrangement will be approved by GSA within a few weeks.

QUESTION NO. 6: Mr. Macklin, on page nine of your testimony, you state "While the Director of the Administrative Office has the duty to 'provide accommodations' for the courts and their component agencies, he does not have clear authority to secure those accommodations on his own." You state one common sense alternative under existing law is a limited delegation of authority to lease space. Could you expand on that statement? Are you proposing the delegation could be used nationwide or only in a situation like the housing of your offices in Washington, D.C.?

ANSWER: We are actually recommending two separate limited delegations of authority.

One would permit us to provide space in communities across the country when a need exists that GSA cannot expeditiously meet. We have had a number of situations arise in recent years in which court personnel serving in a location have been unable to satisfy their basic need for space within a reasonable period of time because GSA has not been able to readily respond to our request. At times only bureaucratic red tape has prevented responsive action. We routinely encounter situations in which a newly confirmed court of appeals judge is assigned work before acquisition of leased facilities for that judge has been commenced. We cannot lease space until we know the judge has "entered on duty," yet the judge is usuallly assigned work the day he or she enters on duty. We regularly face the problem of a judge with work to do not having facilities in which to do the work. If we can arrange to "bear the burden" when GSA advises us that it cannot meet our requested need, we would like to do so — and be held directly responsible to this subcommittee for our exercise of that limited authority.

In addition we would like a specific delegation of authority to lease space for the consolidation in Washington at one location of all of our units (exclusive of our printing plant), the Federal Judicial Center, and the Multidistrict Litigation Panel staff offices. We believe that the National Capitol Regional Office of GSA, restricted as it is to facilities already in its lease inventory, cannot take advantage of the existing favorable market conditions in the Downtown Washington area. GSA advises that it now has no appropriate space for us within the District of Columbia in its current inventory. We believe we can find and arrange a fully satisfactory consolidated facility more expeditiously and at equivalent or lower cost. Our experience within the past year has convinced us that trying to "jury rig" an arrangement is not only an invitation to an inadequate solution to our problem, but a time-wasting and therefore unnecessarily expensive undertaking.

QUESTION NO. 7: Mr. Macklin, as you may be aware, G.S.A. issued a broad delegation of authority in October of 1982 to all agencies for repair projects if the cost was less than $10,000. Has the Administrative Office of the Courts ever utilized this authority?

ANSWER: We have not utilized that authority yet. Although we may utilize it at some future date, we would not anticipate its extensive use. Attached is the text of the regulation governing use of the authority. The number of instances in which it has been applicable to court projects have been few and we believe that will remain the pattern of experience. In those few instances in which we have to date been able to consider it, we have concluded that its use would not have been cost-effective.

PART 101-20 MANAGEMENT OF BUILDINGS AND GROUNDS

§ 101-20.102 Repairs and initial space alterations.

GSA shall arrange for:

(a) Repainting office, court, postal, joint-use, and similar space at least once every 5 years, and repainting public areas in these spaces once every 3 years. Additional painting will be performed on a reimbursable basis.

(b) Initial space alterations, improvements, and repairs to buildings and facilities as necessary to protect building occupants, visitors, operational continuity of the agencies housed, and the investment of the Government within the limit of funds available therefor. Such work shall be performed in leased premises by GSA to the extent that the Government is responsible therefor under the provisions of the lease; and to the extent that the limitations of section 322 of the Economy Act (40 U.S.C. 278a) are not exceeded except as otherwise provided by law.

(c) Initial space alterations (1) comparable to those normally provided by the commercial sector for new occupants in buildings for which GSA has assignment responsibility or (2) to the extent necessary as a result of moves ordered by GSA in the assignment or reassignment of space.

§ 101-20.103 Leased buildings.

Space and services in leased buildings will be based on the same standards and levels of services provided in government-owned space. However, the scope of the operation and maintenance performed by GSA will be predicated on the extent of the lessor's liability therefore under the terms of the lease. Agencies are not authorized to negotiate with lessors, or to place orders against unit price agreements for alterations or building services without prior approval of GSA, except as provided in § 101-20.105(a).

§ 101-20.104 Physical protection and building security.

(a) There will be furnished physical protection to provide for the safety of those using the facilities, for maintaining order, for safeguarding the Government's interest in the facilities, and for otherwise forestalling interference with the normal process of the Government Subpart 101-20.5 prescribes policies and procedures for the physical protection of space under the assignment responsibility of GSA.

(b) Security protection beyond that provided under normal coverage can be made available on a reimbursable basis at the request of the occupants.

§ 101-20.105 Reimbursable services.

Services over and above those prescribed in §§ 101-20.101, 101-20.102, 101-20.103, and 101-20.104 or those services that are requested by and performed for the convenience of occupant agencies shall be provided or arranged for by GSA on a reimbursable basis, except as provided in paragraph (a) of this section. These services include:

(a) Special Space alterations, except for communication/security systems, required by occupant agencies above the standard level provided by GSA and prescribed in § 101-20.102.

(1) Where GSA has operative indefinite quantity contracts and unit price agreements for accomplishment of space alterations in Government-owned and -leased buildings, respectively, agencies may order against these contracts and agreements. Agencies wishing to use this authority shall submit names and addresses of proposed ordering officials and their alternates to the GSA buildings manager, who will submit them to the GSA contracting officer. Each agency shall be limited to one designated ordering official and one alternate in any building. The contracting officer shall designate in writing the ordering official and alternate by name and will authorize the contractor to accept orders from only the designated ordering official or alternate. The GSA contracting officer will advise the agencies' ordering officials and their alternates in writing of their responsibilities, authorities, and limitations under these contracts and agreements. Designated agency ordering officials may, with the prior written approval of the GSA buildings manager on each order, order special space alteration services available under these contracts and agreements. The GSA

buildings manager with the assistance of the GSA contracting officer. Real Estate or Buildings Management Divisions, where applicable, shall review and approve the orders and modifications thereto based on, but not limited to, the following criteria:

(i) The work is compatible with, and will not adversely affect, building structures, fire and safety systems, mechanical/electrical systems, or historically preserved building features.

(ii) The work conforms to GSA standards for safety, space utilization, fire protection, and handicapped access.

(iii) In leased buildings, the work is acceptable to the lessor, not the responsibility of the lessor, and within the Economy Act Limitations.

(iv) Whether it is feasible for Government (force account) personnel to perform the work.

(v) Whether it is feasible to combine the work with other similar scheduled work in a building.

(vi) In Government-owned buildings, the work is not already included in a prospectus.

(vii) Only scheduled items have been ordered.

(2) No individual order or combination of orders for a special space alteration project against GSA contracts or agreements shall exceed $10,000. Requirements aggregating more than $10,000 shall not be split into several orders of less than $10,000. Agencies shall use Standard Form 147, GSA Form 300, Order for Supplies or Services, or any other approved purchasing document to order special space alteration services under these GSA contracts and agreements. Any disputes between an agency ordering official and a contractor concerning the provisions of, or performance under, an indefinite quantity contract or unit price agreement that cannot be resolved by mutual agreement shall be referred to the GSA contracting officer for appropriate action. For all orders against GSA contracts or agreements, agency ordering officials shall furnish within 10 days of preparation one copy each of the ordering document and final payment document to the buildings manager and to the GSA Contracting Officer. The final payment voucher shall be supported with the following documents:

(i) GSA Form 1142, Release of Claims, or equivalent forms.

(ii) GSA Form 2419, Certification of Payments to Subcontractors and Suppliers.

(iii) Certification that work has been inspected and accepted and meets the provisions of the contract, and that the contractor has complied with all provisions of the contract regarding the subject delivery order.

(3) Where no GSA contracts or agreements are in effect or where specific items are not available under existing contracts or agreements, an agency may contract directly for services up to a maximum of $10,000 per project, after obtaining written approval of the GSA buildings manager. Agencies contracting directly must provide the GSA buildings manager with complete documentation of the scope of work and contract specifications at the time of submission for approval. GSA review and approval for agency-written contracts will be based on the same criteria applied to orders against GSA contracts and agreements.

(4) Agencies shall be responsible for inspecting and certifying satisfactory completion of the ordered work and for contractor compliance with the provisions of all agency-ordered work, whether against GSA contracts and agreements or agency-written contracts. Agencies shall institute procedures that are adequate to ensure separation of the ordering process from the inspection and acceptance process. Where alterations will affect the classification or utilization of space, or involve special wall finishes or other non-standard items or facilities, Real Estate Division's approval is required. The agency's initial approval submission on all alterations under this delegation of authority must include a layout of the agency's space to assist in the evaluation. The agency must identify the amount of alterations subject to the Economy Act limitation, and, if GSA advises that the 25 percent limit has been reached, the agency must prepare a Certificate of Determination before the work will be approved. As-built drawings must be submitted within 30 days of completion.

QUESTION NO. 8: Mr. Macklin, on page six of your testimony, you state that G.S.A. Regional Office personnel too often refuse to recognize that your judges work in courthouses every day and know more about juror facilities than a G.S.A. employee who is working on a court project for the first time. However, on page nine of your testimony, you stated that last summer Mr. Carmen designated a court liaison officer in the Central Office, and one in each Regional Office, to insure that court projects are handled expeditiously. How do these two statements intertwine? Have things improved?

ANSWER: Mr. Carmen's expeditious and constructive response to the Chief Justice's concerns is a very encouraging development. As I said in the statement, we have had a successful record of experience at the Chief Justice-Administrator level. The assistance of the Central Office court liaison officer has also been valuable. However, the record of experience at lower levels has been disappointing to date. If future practice lives up to the promise, the liaison officer approach could substantially reduce delays and consequential costs. While we are still awaiting a record of substantial improvement at the regional level, we have already noticed an enhanced level of responsiveness and cooperation, and we are hopeful that a year or two from now we can praise G.S.A. performance at all levels. My testimony was intended to emphasize our belief that GSA or contract architects should, as a matter of common sense, not simply "consult with" our judges and court employees, but recognize that their knowledge of their needs is a major asset to efficient design and cost-effective construction. If "form follows function," and we believe it should, architects should not be telling judges what judges need — they should be listening first and thereafter using their expertise to meet the needs delineated by the judges.

QUESTION NO. 9: Incompetency and intransigency may not be restricted to G.S.A. in the opinion of some Members as exemplified by the situation in Atlanta. What controls are in effect to ensure requests or decisions made by judges are not excessive or are hindering attempts made to meet the court's space requirements?

ANSWER: Members' opinions of the "situation in Atlanta" may well be based upon misinformation. Senator Proxmire's characterization of events, as published in the Congressional Record of September 14 (at S 12212), has legitimately been criticized as not fully accurate. See the enclosed September 2 editorial published by The Atlanta Constitution. From our perspective, our judges made a conscientious effort to adjust their court's needs to dramatically changing conditions, only to then find their well-intentioned actions maligned.

The "situation in Atlanta" aside, there have been instances in which individual judges have acted in a manner strongly disapproved by the Conference. See page 7 of my prepared testimony. The controls which "are in effect" to ensure that such actions are not repeated in the future are fully explained at page 8 of my prepared statement. As I there noted, we have demonstrated our willingness to examine our part in the process critically — and to effect strong corrective action. We would like to see G.S.A. do so, and have suggested several areas in which it might begin to examine its part in the process critically.

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PAGE 20-A, FRIDAY, SEPTEMBER 2, 1983

Proxmire: Master of misimpressions

And to Sen. William Proxmire, the Golden Wool Award, named for what he all too often pulls over taxpayers' eyes by way of trying to make it look as though he is defending them against a wastrel bureaucracy.

The Wisconsin Democrat gave his most recent Golden Fleece Award to the U.S. judges in Atlanta for, he said, insisting on so many change orders in the construction of the Richard Russell Federal Building that the poor, picked-upon taxpayers got stuck for an unnecessary $7 million in costs.

The real story, as with so many of Proxmire's fleeces, is somewhat more complicated.

The Russell Building was designed in 1974, and in 1979, before its completion, Congress expanded the U.S. District Court in Atlanta from six judges to 11.

The choice, then, was either to send through some accommodating change orders or to start over from scratch — with a new design, a new congressional authorization and new bidding. That would have delayed completion of the building for four years and would have cost far more than the $7 million Proxmire so self-righteously complains about.

This fleece thing is an old scam of Proxmire's. He has been making headlines with it for years and often is none too fastidious about how he makes them. He has particularly targeted federally supported scientific research — not because the research is invalid, but simply because research projects often have titles that sound incomprehensible or silly to laymen and can be ridiculed.

William Proxmire

Taxpayers, of course, deserve protection from any bureaucratic tendency to profligacy with their money. But Proxmire is not so much a paladin as a panderer to public misimpressions.

QUESTION NO. 10: Mr. Macklin, on page five of your testimony, you pointed out a very frustrating housing situation regarding a new courthouse in Madison, Wisconsin, whereby it took 12 years to house the courts. What is the general time frame associated with a new statutory location being designated by Congress? I suspect if construction takes this long, the courts would prefer for G.S.A. to lease space only because it would not take so long. However, this committee feels courts should be located in government-owned buildings due to their permanent nature. Could you comment on these observations?

ANSWER: There really is no identifiable "general time frame" which we can cite in relation to the construction of new facilities or the completion of renovation and alteration projects. In our recent experience each project has been sui generis, and extensively influenced by a multitude of variable factors. Abstractly we favor occupancy of government-owned buildings in all instances. Realistically we face situations in which appropriate or adequate space in government-owned buildings is simply not available when it is needed. I believe I can state with certainty that the Judicial Conference and the Administrative Office fully agree with your conclusion that "owning" facilities is more sensible and desirable than "renting" them.

QUESTION NO. 11: Mr. Macklin, recently this committee, contrary to the recommendation of G.S.A., authorized construction of a courthouse in White Plains, New York, to accommodate the courts. Recognizing the courts' needs could increase in future years, the subcommittee directed G.S.A. to attempt to design a facility which could be added on to in future years. Do you feel this is a reasonable approach in view of the fact the courts tend to always increase and never decrease?

ANSWER: We agree that it is often a very reasonable approach. More importantly, however, we agree that the decision to recommend the approach is a matter within your discretion. Administrative Office witnesses have repeatedly assured Congress that we do not perceive the discretionary judgments involved in such recommendations to be ours.

Just last year, in connection with your review of the Youngstown, Ohio prospectus, Bill Weller reiterated the position which the judiciary has taken in recent years before this committee and the Judiciary and Appropriations Committees: we will request only that space we can certify as necessary as of the time of our request. If we know that a judge will need "senior status" chambers in a location in two years, and we are requesting space for that location, we will include that known future need. If, however, we are not able to ascertain with certainty, subject to an Act of God or Congress, a future need, we will not speculate on one.

In summary, we believe we have an obligation to ask for space only when we are as sure as possible that it is actually needed. We will cooperate with G.S.A. and this subcommittee in efforts to assess future predictable needs, but we defer to you any decision to provide for needs which we cannot adequately justify.

QUESTION NO. 12: Mr. Macklin, you mentioned that currently pending in Congress is legislation which would authorize 24 additional court of appeals judgeships and 51 additional district court judgeships requested by the Conference in September of 1982. What is the status of the legislation and could you provide a listing of the additional judgeships for the subcommittee's information?

ANSWER: At the moment there are pending in the House of Representatives two bills which would authorize the twenty-four additional courts of appeals judgeships and the fifty-one additional district court judgeships recommended by the Judicial Conference of the United States in September of 1982. Both bills are principally designed to resolve a jurisdictional problem created by a constitutionally invalid conferral of power upon bankruptcy court judges in a provision of the 1978 Bankruptcy Reform Act (Sec. 241(a) of Pub. L. No. 95-598, 92 Stat. 2668).

S. 1013

As passed by the Senate on April 27, 1983, Title III of S. 1013 contains authorization for the twenty-four courts of appeals judgeships requested by the Conference, authorization for the fifty-one district court judgeships requested by the Conference, and authorization for ten district court positions requested by the Department of Justice. The Judicial Conference refrained from endorsing the Department's recommendations in the attached testimony of Judge Elmo B. Hunter on April 6, 1983. See Attachment 2. S. 1013 is currently pending before the House Committee on the Judiciary.

H.R. 3257

Introduced on June 8, 1983, H.R. 3257 contains, in Title II, authorization for the twenty-four courts of appeals judgeships requested by the Conference, authorization for the fifty-one district court judgeships requested by the Conference, and authorization for one additional district court judgeship not included with the Conference's recommendations. H.R. 3257 is currently pending before the House Committee on the Judiciary.

Attachment 1 presents the listing you have requested. Judgeships in addition to those recommended by the Conference in both S. 1013 and H.R. 3257 are "boxed" for easy identification.

COURTS OF APPEALS

Circuits	Existing	A *	B *	C *
District of Columbia	11	1	1	1
First	4	2	2	2
Second	11	2	2	2
Third	10	2	2	2
Fourth	10	1	1	1
Fifth	14	2	2	2
Sixth	11	4	4	4
Seventh	9	2	2	2
ighth	9	1	1	1
Ninth	23	5	5	5
Tenth	8	2	2	2
Eleventh	12	0	0	0
Federal	12	0	0	0
	144	24	24	24

* Col. A - Recommended by Judicial Conference
Col. B - Approved by Senate, S. 1013, April 1983
Col. C - Included in H.R. 3257, June 1983

DISTRICT COURTS

Districts	Existing	A *	B *	C *
Alabama:				
Northern	7	0	0	0
Middle	3	0	0	0
Southern	2	1	1	1
Alaska	2	1	1	1
Arizona	8	0	0	0
Arkansas:				
Eastern	3	0	0	0
Western	1	1T	1T	1T
Eastern & Western	2	0	0	0
California:				
Northern	12	0	0	0
Eastern	6	0	0	0
Central	17	4	⑤	4
uthern	7	0	0	0
Colorado	6	0	①	0
Connecticut	5	1	1	1
Delaware	3	0	①	0
District of Columbia	15	0	0	0
Florida:				
Northern	3	0	0	0
Middle	9	0	0	(1T)
Southern	12	3	3	3
Georgia:				
Northern	11	0	0	0
Middle	2	1	1	1
Southern	3	0	0	0
Hawaii	2	1	1	1
Idaho	2	0	0	0
Illinois:				
rthern	16	3 + 1T	④ + 1T	3 + 1T
ntral	3	0	0	0
Southern	2	1	1	1

	Existing	A *	B *	C *
Indiana:				
Northern	4	1T	1T	1T
Southern	5	0	0	0
Iowa:				
Northern	1	0	0	0
Southern	2	0	0	0
Northern & Southern	1	0	0	0
Kansas	5	0	0	0
Kentucky:				
Eastern	4 + 1T	0	0	0
Western	3	1	1	1
Eastern & Western	1	0	0	0
Louisiana:				
Eastern	13	0	0	0
Middle	2	0	0	0
Western	5	1	1	1
Maine	2	0	0	0
yland	9	1	1	1
Massachusetts	10	1 + 1T	1 + 1T	1 + 1T
Michigan:				
Eastern	13	2	2	2
Western	4	0	0	0
Minnesota	5 + 1T	1T/P	①+ 1T/P	1T/P
Mississippi:				
Northern	2	1	1	1
Southern	3	2	2	2
Missouri:				
Eastern	4	1	1	1
Western	5	0	0	0
Eastern & Western	2	0	0	0
Montana	2	1	1	1
Nebraska	3	0	0	0
Nevada	3	0	①	0
Hampshire	2	0	0	0
New Jersey	11	3	3	3

	Existing	A *	B *	C *
New Mexico	4	0	0	0
New York:				
Northern	3	1	1	1
Southern	27	0	0	0
Eastern	10	2	2	2
Western	3	1T	1T	1T
North Carolina:				
Eastern	3	1T	1T	1T
Western	3	0	0	0
Middle	3	0	0	0
North Dakota	2	0	0	0
Ohio:				
Northern	9 + 1T	1T + 1T/P	1T + 1T/P	1T + 1T/P
Southern	6	0	①	0
Oklahoma:				
Northern	2	0	0	0
Eastern	1	0	0	0
Western	3	1	1	1
Northern, Eastern & Western	2	0	0	0
Oregon	5	0	0	0
Pennsylvania:				
Eastern	19	0	0	0
Middle	5	0	0	0
Western	10	0	0	0
Puerto Rico	7	0	0	0
Rhode Island	2	1	1	1
South Carolina	8	0	0	0
South Dakota	3	0	0	0
Tennessee:				
Eastern	3	1	1	1
Middle	3	0	0	0
Western	3	1	1	1
Texas:				
Northern	9	0	①	0
Southern	13	0	0	0
Eastern	4	2	2	2
Western	6	1	1	1

	Existing	A *	B *	C *
Utah	3	0	①	0
Vermont	2	0	0	0
Virginia:				
Eastern	8	1	1	1
Western	4	0	0	0
Washington:				
Eastern	2	0	①	0
Western	5	1 + 1T	1 + 1T	1 + 1T
West Virginia:				
Northern	2	0	0	0
Southern	4	0	0	0
Wisconsin:				
Eastern	4	0	0	0
Western	2	0	0	0
Wyoming	1	1	1	1
	508	43	53	43
	+ 3T	8T	8T	9T
		2T/P	2T/P	2T/P
	511			

* Col. A - Recommended by Judicial Conference
Col. B - Approved by Senate, S. 1013, April 1983
Col. C - Included in H.R. 3257, June 1983

ATTACHMENT 2

PREPARED STATEMENT

OF

HONORABLE ELMO B. HUNTER
CHAIRMAN
COMMITTEE ON COURT ADMINISTRATION
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

WEDNESDAY
APRIL 6, 1983

Mr. Chairman, I thank the members and staff of this committee for accepting a written statement for the record in lieu of my personal appearance and testimony. I regret that adjustments in my trial calendar, which would have permitted my personal participation at this hearing, were not possible. I hope, however, that this prepared statement on behalf of the Judicial Conference will adequately meet your needs -- and I am confident that you will be able to use well the time which I would have taken in testifying.

I have been advised that the purpose of your hearing is that of ascertaining what "need" may exist for *district* court judicial positions *in addition to* those approved by this committee on March 22 in section 302 of the "Bankruptcy Court and Federal Judgeship Act of 1983," a "clean bill" offered by Senators Thurmond and Heflin. In light of your favorable response to recommendations presented to the Judicial Conference in September of 1982 by its Committee on Court Administration,[1] I genuinely wish I were able to provide a definitive evaluation of the "need" which you are trying to assess. I am not able to do so now, nor do I believe the Court Administration Committee will be able to do so for many months. Being unable to provide a precise list of recommended positions and justification for them does not, however, preclude the provision of comments which you may find useful in your present efforts.

Before offering those comments, I should explain why the Court Administration Committee -- and the Conference -- are unable to *now* provide recommendations such as those we have offered regularly for almost two decades. As explained in a summary memorandum filed with the Senate on February 1, 1983 (see attached copy) the Judicial Conference, in response to Congressional requests, began filing its recommendations for additional district court and courts of appeals judgeships with Congress at regular intervals in 1965. Beginning in 1979 the Conference scheduled nationwide surveys for assessing district court and courts of appeals needs at two-year intervals. Commonly referenced now as "biennial judgeship surveys," the Conference's processes and procedures -- through refinement and modification in cooperation with the Judiciary Committees of the Senate and the House -- have gradually earned widespread acceptance among judges and credibility among Members of both the Senate and the House. This committee's favorable action on March 22 regarding the Conference's September 1982 recommendations is just the latest instance in which confidence in the Conference's work product has been expressed by the Senate.

As Chairman of the Conference's Court Administration Committee, I regard the evolutionary development of the "biennial judgeship survey" method of assessing the courts' needs -- and its acceptance by Congress -- as one of the most valuable developments in federal judicial administration in a century which has witnessed continuing reforms in that field. I am personally very aware of how much effort has been invested in attaining the level of reliability and credibility our processes now have -- effort expended by responsible Members as well as by judges who are committed to holding growth in federal judicial branch personnel and related costs to a manageable level -- the minimum essential level needed to adequately service the public.

In essence, I believe our methodology has proven to be responsible and reliable for several very basic reasons:

(1) We carefully weigh *both* objective *and* subjective factors through a process which permits individual courts and judges an extensive opportunity to "plead their cases";

(2) We maximize our ability to bring a measure of "national uniformity" to a task which realistically must consider local conditions and concerns;

(3) We do not "guesstimate" or "project" needs, but rely upon known and proven *existing* factors for evaluating, at a finite point in time, *existing* needs in light of prolonged *past* experience;

(4) We deny courts which do not "prove their cases" convincingly exemptions from established standards and require them to "await the next survey".

Given the "hard earned" acceptance of our methodology by judges, and its measure of credibility in Congress, I believe the Conference has an obligation to the Congress to act only in conformity with its established procedures -- unless a situation arises which constitutes a unique emergency for the courts. I do not believe we now face such an emergency, and, obviously, we do not now have time to use our "biennial survey" procedures to address the matter before you in this hearing. Nevertheless, I may be able to provide several comments which you may find useful.

Because the "Bankruptcy Court and Federal Judgeship Act of 1983," as ordered reported on March 22, authorizes a "jurisdictional clarification" remedy to the problem posed by the Supreme Court's decision in *Northern Pipeline*, you are fundamentally confronted with the task of estimating *how much* of the adjudicatory work recently performed in departmental bankruptcy courts will be "shifted into" the district courts. As events since

June 28, 1982 have dramatically demonstrated, that question does not lend itself to easy answers. With the passage of each month, however, we are learning more about the issue.

In September of 1982, in a special Report to the Congress, the Judicial Conference "estimated" that fifteen percent of adversary proceedings commenced in the bankruptcy courts during the transition period authorized by the 1978 Bankruptcy Reform Act constituted a valid measure of "Article III" work -- i.e., cases in the "related to" category impacted by the *Northern Pipeline* decision.[2] Studies conducted by the Administrative Office since last September have verified that estimate -- and documentation of the fact that less than our estimated fifteen percent -- ten percent -- was a reliable measure of such work in the heaviest period of activity (management year 1982) has now been widely distributed to the Members of this committee and its staff.

Our limited experience under the "interim rule" since December 26, 1982 has yet to contradict our September 1982 findings. At the most recent meeting of the Judicial Conference, on March 16-17, 1983, every member of the Conference agreed that the quantity of work "shifted into" district courts under provisions in the "interim rule" was well within the Conference's anticipated ten-to-fifteen-percent-of-adversary-proceedings estimate. Preliminary reports filed with the Administrative Office for the months of January and February are summarized in Appendix A to this statement.

Should you then assume that a given percentage of adversary proceedings commenced in management year 1982 is a reliable "measure"? In response to specific Congressional requests late last year, the Administrative Office prepared a study of the number of judgeships needed by individual districts, if (1) the fifty-one positions already recommended by the Conference were authorized, and (2) various percentages of commenced adversary proceedings in 1982 were then used as a "measure of additional district judge workload". The numbers of positions ranged from 121 less 51, or 70 -- if a ten-percent measure were used -- to 165 less 51, or 114 -- if a twenty-five-percent measure were used. A table reflecting the findings of that study is attached to this statement as Appendix B.

That study became the basis for provisions included in S. 443 in this Congress, which adopted the twenty-five-percent measure. In his introductory remarks on February 3 Senator Dole expressly distinguished the positions based upon that measure from those district court positions, also included in S. 443, which were formally approved and recommended by the Judicial Conference in September of 1982.[3] I am grateful to him for doing so, because I personally would not want the Administrative Office study to be perceived to be equivalent to the "biennial judgeship survey" process used by the Court Administration Committee. The Administrative Office study obviously has not been proven over a period of years to be an accurate means of assessing need. Is it, therefore, unreliable? I personally do not believe it can be characterized as unreliable, even if a few individual judges in several districts believe, as they have advised me they do, that the resulting numbers are too high or too low for their courts. Naturally, there is going to be disagreement. We are all "guesstimating" at this point, and still very uncertain of how much weight to give to *"subjective" factors.* I personally believe that, in the context of identifying a valuable *"objective" factor* for measurement, the "percentage-of-adversary-proceedings-commenced" yardstick is currently the most rational and defensible measure available.

Can you use it to assess the impact on individual districts of the "jurisdictional delineation" provisions in the committee-approved bill? Certainly. We know, however, that, although ten percent of the adversary proceedings commenced in 1982 were in the "related to" category impacted by the *Northern Pipeline* decision, the 70 positions identified in the Administrative Office study may actually not all prove to be needed as a result of the provisions in your approved bill -- provisions which provide a very flexible arrangement for workload management by district and bankruptcy judges. In this regard, the continued role of bankruptcy judges in cases that have been recalled and their ability to handle cases on consent may diminish the need for the 70 positions. It is also entirely possible that the impact of these procedures will vary from district to district.

Should you, therefore, as a precautionary action, try to provide additional positions now only in those few instances where very large numbers of proceedings have been reported? I have reviewed the proposal prepared by the Department of Justice for your March 22 meeting, in which eight district court positions were recommended in addition to those approved by the Conference last September, based upon assessed probable district workload impact. Without in any manner endorsing the approach adopted by the Department -- personally or on behalf of the Judicial Conference -- I certainly would not criticize it. I regard it as a constructive attempt to address a difficult issue in a responsible manner. Again, all of us are "guesstimating" a future experience which has yet to occur.

Given that reality, should you simply postpone authorization of any positions other than those currently included in your bill as ordered reported? With apologies, I must candidly admit to "tossing that one back to you". In the final analysis, the task you face is a policy matter which only you can resolve, and my Conference Committee regrettably is in no position to be of immediate assistance to you. I can advise you that, if you do decide to limit positions to those you have already approved, and if your bill is enacted, our "biennial survey" procedures will gradually provide information which I believe will be accurate, dependable and reliable. Will heavily burdened individual courts survive? Of course they will -- but in some cases perhaps only at the cost of undesirable backlogs in case terminations. Where certificable emergencies develop, if they do, the Conference will of course advise you of the development -- and I expect individual courts will let you know they are "in trouble" as well. Should you choose to let future events after enactment of the bill you have reported determine your actions, I can assure you that the Court Administration Committee will do its best to assist you in your efforts. We will be commencing a biennial survey in May, and the results will be presented to the Conference for final approval in September of 1984.

Finally, permit me to note -- although this hearing is primarily concerned with *district* judgeships -- that questions have also been raised as to the number of bankruptcy judgeships provided in this bill. Surveys of judgeship needs in the bankruptcy courts fall within the jurisdiction of the Judicial Conference Committee on the Administration of the Bankruptcy System. My colleague, the Honorable Robert E. DeMascio, the Chairman of that Committee, has prepared an additional statement on that issue which I have attached as an appendix to this statement.

I thank you for inviting the views expressed in this statement. I genuinely regret being unable to be of greater assistance to you, and I again thank you for accommodating litigants in my court by excusing me from personally appearing at your hearing.

FOOTNOTES

1. See *Hearings on Additional Judicial Positions for the Courts of Appeals and District Courts of the United States, Before the Subcomm. on Courts of the Senate Committee on the Judiciary*, 97th Cong., 1st Sess. (1981); *Hearings on Legislation for the Improvement of the Judiciary, Before the Subcomm. on Courts of the Senate Committee on the Judiciary*, 97th Cong., 2d Sess., at 17-267 (1982); and *Proceedings of the Judicial Conference, Sept. 22-23, 1982*, at 60-63.

2. Report of the Judicial Conference of the United States on *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co. et al.* and Proposals for Remedial Congressional Action, Sept. 1982, at 16-19.

3. 129 CONG. REC. S 1034 (daily ed. Feb. 3, 1983).

Summary of Bankruptcy Court Matters Transmitted to the U.S. District Court For the Month of January 1983*

Circuit and District	Filed				Terminated				Pending Jan. 31			
	Total	A[1]	B[2]	M[3]	Total	A[1]	B[2]	M[3]	Total	A[1]	B[2]	M[3]
al	583	401	11	171	282	117	9	156	301	284	2	15
District of Columbia	-	-	-	-	-	-	-	-	-	-	-	-
First Circuit	33	30	-	3	3	1	-	2	30	29	-	1
Maine	1	1	-	-	-	-	-	-	1	1	-	-
Massachusetts	29	28	-	1	1	1	-	-	28	27	-	1
New Hampshire	-	-	-	-	-	-	-	-	-	-	-	-
Rhode Island	2	-	-	2	2	-	-	2	-	-	-	-
Puerto Rico	1	1	-	-	-	-	-	-	1	1	-	-
Second Circuit	31	18	1	12	19	7	1	11	12	11	-	1
Connecticut	6	6	-	-	1	1	-	-	5	5	-	-
New York, Northern	-	-	-	-	-	-	-	-	-	-	-	-
New York, Eastern	2	2	-	-	2	2	-	-	-	-	-	-
New York, Southern	19	9	1	9	14	4	1	9	5	5	-	-
New York, Western	4	1	-	3	2	-	-	2	2	1	-	1
Vermont	-	-	-	-	-	-	-	-	-	-	-	-
Third Circuit	27	21	-	6	16	11	-	5	11	10	-	1
Delaware	1	1	-	-	1	1	-	-	-	-	-	-
New Jersey	20	15	-	5	13	8	-	5	7	7	-	-
Pennsylvania, Eastern	-	-	-	-	-	-	-	-	-	-	-	-
Pennsylvania, Middle	1	1	-	-	-	-	-	-	1	1	-	-
Pennsylvania, Western	5	4	-	1	2	2	-	-	3	2	-	1
Virgin Islands	No Report											
Fourth Circuit	213	140	5	68	117	46	4	67	96	94	1	1
and	10	10	-	-	-	-	-	-	10	10	-	-
Carolina, Eastern	-	-	-	-	-	-	-	-	-	-	-	-
North Carolina, Middle	7	7	-	-	-	-	-	-	7	7	-	-
North Carolina, Western	3	3	-	-	-	-	-	-	3	3	-	-
South Carolina	12	11	1	-	3	3	-	-	9	8	1	-
Virginia, Eastern	40	37	-	3	29	26	-	3	11	11	-	-
Virginia, Western	63	59	4	-	9	5	4	-	54	54	-	-
West Virginia, Northern	-	-	-	-	-	-	-	-	-	-	-	-
West Virginia, Southern	78	13	-	65	76	12	-	64	2	1	-	1
Fifth Circuit	12	9	-	3	5	3	-	2	7	6	-	1
Louisiana, Eastern	2	2	-	-	1	1	-	-	1	1	-	-
Louisiana, Middle	-	-	-	-	-	-	-	-	-	-	-	-
Louisiana, Western	-	-	-	-	-	-	-	-	-	-	-	-
Mississippi, Northern	-	-	-	-	-	-	-	-	-	-	-	-
Mississippi, Southern	-	-	-	-	-	-	-	-	-	-	-	-
Texas, Northern	7	4	-	3	2	-	-	2	5	4	-	1
Texas, Eastern	-	-	-	-	-	-	-	-	-	-	-	-
Texas, Southern	3	3	-	-	2	2	-	-	1	1	-	-
Texas, Western	-	-	-	-	-	-	-	-	-	-	-	-
Sixth Circuit	63	51	-	12	13	1	-	12	50	50	-	-
Kentucky, Eastern	-	-	-	-	-	-	-	-	-	-	-	-
Kentucky, Western	-	-	-	-	-	-	-	-	-	-	-	-
Michigan, Eastern	44	39	-	5	5	-	-	5	39	39	-	-
Michigan, Western	3	3	-	-	-	-	-	-	3	3	-	-
Ohio, Northern	9	2	-	7	8	1	-	7	1	1	-	-
Ohio, Southern	1	1	-	-	-	-	-	-	1	1	-	-
Tennessee, Eastern	5	5	-	-	-	-	-	-	5	5	-	-
nessee, Middle	-	-	-	-	-	-	-	-	-	-	-	-
essee, Western	1	1	-	-	-	-	-	-	1	1	-	-

January 1983 is the first month in which data was collected.

[1] Adversary proceedings or motions within an adversary proceeding.

[2] Entire bankruptcy case.

[3] Motion or other matters within bankruptcy case.

April 5, 1983

For the Month of January 1983*
(continued)

Circuit and District	Filed Total	Filed A¹	Filed B²	Filed M³	Terminated Total	Terminated A¹	Terminated B²	Terminated M³	Pending Jan. 31 Total	Pending Jan. 31 A¹	Pending Jan. 31 B²	Pending Jan. 31 M³
Seventh Circuit	35	16	1	18	22	6	1	15	13	10	-	3
Illinois, Northern	20	9	-	11	10	2	-	8	10	7	-	3
Illinois, Central	-	-	-	-	-	-	-	-	-	-	-	-
Illinois, Southern	5	-	-	5	5	-	-	5	-	-	-	-
Indiana, Northern	-	-	-	-	-	-	-	-	-	-	-	-
Indiana, Southern	6	5	1	-	4	3	1	-	2	2	-	-
Wisconsin, Eastern	3	1	-	2	3	1	-	2	-	-	-	-
Wisconsin, Western	1	1	-	-	-	-	-	-	1	1	-	-
Eighth Circuit	37	36	-	1	1	1	-	-	36	35	-	1
Arkansas, Eastern	1	1	-	-	-	-	-	-	1	1	-	-
Arkansas, Western	-	-	-	-	-	-	-	-	-	-	-	-
Iowa, Northern	-	-	-	-	-	-	-	-	-	-	-	-
Iowa, Southern	3	3	-	-	-	-	-	-	3	3	-	-
Minnesota	5	5	-	-	1	1	-	-	4	4	-	-
Missouri, Eastern	13	13	-	-	-	-	-	-	13	13	-	-
Missouri, Western	13	12	-	1	-	-	-	-	13	12	-	1
Nebraska	2	2	-	-	-	-	-	-	2	2	-	-
North Dakota	-	-	-	-	-	-	-	-	-	-	-	-
South Dakota	-	-	-	-	-	-	-	-	-	-	-	-
Ninth Circuit	53	26	2	25	33	8	2	23	20	18	-	2
Alaska	No Report											
Arizona	5	3	-	2	2	-	-	2	3	3	-	-
California, Northern	10	7	2	1	7	4	2	1	3	3	-	-
California, Eastern	4	-	-	4	2	-	-	2	2	-	-	2
California, Central	15	-	-	15	15	-	-	15	-	-	-	-
California, Southern	5	5	-	-	1	1	-	-	4	4	-	-
Hawaii	-	-	-	-	-	-	-	-	-	-	-	-
Idaho	-	-	-	-	-	-	-	-	-	-	-	-
Mo	9	8	-	1	1	-	-	1	8	8	-	-
Ne	-	-	-	-	-	-	-	-	-	-	-	-
Oregon	3	2	-	1	3	2	-	1	-	-	-	-
Washington, Eastern	1	-	-	1	1	-	-	1	-	-	-	-
Washington, Western	1	1	-	-	1	1	-	-	-	-	-	-
Tenth Circuit	55	38	1	16	45	29	1	15	10	9	-	1
Colorado	2	1	1	-	2	1	1	-	-	-	-	-
Kansas	44	29	-	15	41	26	-	15	3	3	-	-
New Mexico	2	2	-	-	-	-	-	-	2	2	-	-
Oklahoma, Northern	3	3	-	-	2	2	-	-	1	1	-	-
Oklahoma, Eastern	-	-	-	-	-	-	-	-	-	-	-	-
Oklahoma, Western	2	1	-	1	-	-	-	-	2	1	-	1
Utah	2	2	-	-	-	-	-	-	2	2	-	-
Wyoming	-	-	-	-	-	-	-	-	-	-	-	-
Eleventh Circuit	24	16	1	7	8	4	-	4	16	12	1	3
Alabama, Northern	4	3	1	-	2	2	-	-	2	1	1	-
Alabama, Middle	1	1	-	-	-	-	-	-	1	1	-	-
Alabama, Southern	5	5	-	-	1	1	-	-	4	4	-	-
Florida, Northern	1	-	-	1	1	-	-	1	-	-	-	-
Florida, Middle	7	3	-	4	2	-	-	2	5	3	-	2
Florida, Southern	-	-	-	-	-	-	-	-	-	-	-	-
Georgia, Northern	2	2	-	-	1	1	-	-	1	1	-	-
Georgia, Middle	-	-	-	-	-	-	-	-	-	-	-	-
Georgia, Southern	4	2	-	2	1	-	-	1	3	2	-	1

April 5, 1983

Summary of Bankruptcy Court Matters Transmitted to the U.S. District Court For the Month of February 1983

Circuit and District	Filed				Terminated				Pending Feb. 28			
	Total	A[1]	B[2]	M[3]	Total	A[1]	B[2]	M[3]	Total	A[1]	B[2]	M[3]
otal	558	341	9	208	295	164	4	127	552	451	7	94
District of Columbia	3	3	-	-	-	-	-	-	-	-	-	-
First Circuit	15	9	-	6	4	1	-	3	41	37	-	4
Maine	-	-	-	-	-	-	-	-	1	1	-	-
Massachusetts	8	3	-	5	4	1	-	3	32	29	-	3
New Hampshire	-	-	-	-	-	-	-	-	-	-	-	-
Rhode Island	5	4	-	1	-	-	-	-	5	4	-	1
Puerto Rico	2	2	-	-	-	-	-	-	3	3	-	-
Second Circuit	24	15	-	9	15	7	-	8	21	19	-	2
Connecticut	7	7	-	-	2	2	-	-	10	10	-	-
New York, Northern	1	1	-	-	-	-	-	-	1	1	-	-
New York, Eastern	1	1	-	-	-	-	-	-	1	1	-	-
New York, Southern	15	6	-	9	12	4	-	8	8	7	-	1
New York, Western	-	-	-	-	1	1	-	-	1	-	-	1
Vermont	-	-	-	-	-	-	-	-	-	-	-	-
Third Circuit	32	30	2	-	16	16	-	-	29	26	2	1
Delaware	-	-	-	-	-	-	-	-	-	-	-	-
New Jersey	29	27	2	-	16	16	-	-	22	20	2	-
Pennsylvania, Eastern	1	1	-	-	-	-	-	-	1	1	-	-
Pennsylvania, Middle	-	-	-	-	-	-	-	-	1	1	-	-
Pennsylvania, Western	2	2	-	-	-	-	-	-	5	4	-	1
Virgin Islands	No February report to date.											
Fourth Circuit	184	85	-	99	87	42	-	45	193	137	1	55
yland	9	9	-	-	-	-	-	-	19	19	-	-
th Carolina, Eastern	1	-	-	1	1	-	-	1	-	-	-	-
orth Carolina, Middle	-	-	-	-	-	-	-	-	7	7	-	-
North Carolina, Western	5	5	-	-	-	-	-	-	8	8	-	-
South Carolina	5	4	-	1	2	1	-	1	12	11	1	-
Virginia, Eastern	43	41	-	2	36	34	-	2	18	18	-	-
Virginia, Western	15	15	-	-	4	4	-	-	65	65	-	-
West Virginia, Northern	5	5	-	-	-	-	-	-	5	5	-	-
West Virginia, Southern	101	6	-	95	44	3	-	41	59	4	-	55
Fifth Circuit	20	13	1	6	7	2	-	5	20	17	1	2
Louisiana, Eastern	2	1	-	1	1	-	-	1	2	2	-	-
Louisiana, Middle	1	1	-	-	-	-	-	-	1	1	-	-
Louisiana, Western	1	1	-	-	1	1	-	-	-	-	-	-
Mississippi, Northern	-	-	-	-	-	-	-	-	-	-	-	-
Mississippi, Southern	-	-	-	-	-	-	-	-	-	-	-	-
Texas, Northern	8	7	-	1	1	-	-	1	12	11	-	1
Texas, Eastern	-	-	-	-	-	-	-	-	-	-	-	-
Texas, Southern	8	3	1	4	4	1	-	3	5	3	1	1
Texas, Western	-	-	-	-	-	-	-	-	-	-	-	-
Sixth Circuit	32	21	-	11	28	18	-	10	54	53	-	1
Kentucky, Eastern	-	-	-	-	-	-	-	-	-	-	-	-
Kentucky, Western	-	-	-	-	-	-	-	-	-	-	-	-
Michigan, Eastern	21	17	-	4	19	15	-	4	41	41	-	-
Michigan, Western	1	1	-	-	-	-	-	-	4	4	-	-
Ohio, Northern	10	3	-	7	9	3	-	6	2	1	-	1
Ohio, Southern	-	-	-	-	-	-	-	-	1	1	-	-
Tennessee, Eastern	-	-	-	-	-	-	-	-	5	5	-	-
Tennessee, Middle	-	-	-	-	-	-	-	-	-	-	-	-
nnessee, Western	-	-	-	-	-	-	-	-	1	1	-	-

Adversary proceedings or motions within an adversary proceeding.
[2] Entire bankruptcy case.
[3] Motion or other matters within bankruptcy case.

April 5, 198

Summary of Bankruptcy Court Matters
Transmitted to the U.S. District Court
For the Month of February 1983
(continued)

Circuit and District	Filed				Terminated				Pending Feb. 28			
	Total	A^1	B^2	M^3	Total	A^1	B^2	M^3	Total	A^1	B^2	M^3
Seventh Circuit	60	12	1	47	41	4	1	36	32	18	-	14
Illinois, Northern	50	9	1	40	33	1	1	31	27	15	-	12
Illinois, Central	-	-	-	-	-	-	-	-	-	-	-	-
Illinois, Southern	-	-	-	-	-	-	-	-	-	-	-	-
Indiana, Northern	2	1	-	1	1	-	-	1	1	1	-	-
Indiana, Southern	3	2	-	1	4	3	-	1	1	1	-	-
Wisconsin, Eastern	3	-	-	3	3	-	-	3	-	-	-	-
Wisconsin, Western	2	-	-	2	-	-	-	-	3	1	-	2
Eighth Circuit	31	29	-	2	24	21	-	3	43	43	-	-
Arkansas, Eastern	4	4	-	-	4	4	-	-	1	1	-	-
Arkansas, Western	9	9	-	-	8	8	-	-	1	1	-	-
Iowa, Northern	-	-	-	-	-	-	-	-	-	-	-	-
Iowa, Southern	1	1	-	-	-	-	-	-	4	4	-	-
Minnesota	4	2	-	2	3	1	-	2	5	5	-	-
Missouri, Eastern	6	6	-	-	1	1	-	-	18	18	-	-
Missouri, Western	6	6	-	-	8	7	-	1	11	11	-	-
Nebraska	1	1	-	-	-	-	-	-	3	3	-	-
North Dakota	-	-	-	-	-	-	-	-	-	-	-	-
South Dakota	-	-	-	-	-	-	-	-	-	-	-	-
Ninth Circuit	71	55	5	11	28	20	3	5	53	45	2	6
Alaska	No February report to date.											
Arizona	13	13	-	-	6	6	-	-	10	10	-	-
California, Northern	22	12	5	5	5	2	3	-	20	13	2	5
California, Eastern	No February report to date.											
fornia, Central	No February report to date.											
fornia, Southern	12	10	-	2	2	1	-	1	14	13	-	1
waii	-	-	-	-	-	-	-	-	-	-	-	-
Idaho	-	-	-	-	-	-	-	-	-	-	-	-
Montana	No February report to date.											
Nevada	-	-	-	-	-	-	-	-	-	-	-	-
Oregon	20	18	-	2	13	11	-	2	7	7	-	-
Washington, Eastern	2	2	-	-	-	-	-	-	2	2	-	-
Washington, Western	2	-	-	2	2	-	-	2	-	-	-	-
Tenth Circuit	56	41	-	15	38	26	-	12	28	24	-	4
Colorado	1	-	-	1	1	-	-	1	-	-	-	-
Kansas	27	17	-	10	27	17	-	10	3	3	-	-
New Mexico	4	2	-	2	-	-	-	-	6	4	-	2
Oklahoma, Northern	1	1	-	-	1	1	-	-	1	1	-	-
Oklahoma, Eastern	1	-	-	1	-	-	-	-	1	-	-	1
Oklahoma, Western	1	1	-	-	1	-	-	1	2	2	-	-
Utah	20	20	-	-	8	8	-	-	14	14	-	-
Wyoming	1	-	-	1	-	-	-	-	1	-	-	1
Eleventh Circuit	30	28	-	2	7	7	-	-	38	32	1	5
Alabama, Northern	6	6	-	-	2	2	-	-	6	5	1	-
Alabama, Middle	1	1	-	-	1	1	-	-	1	1	-	-
Alabama, Southern	13	13	-	-	-	-	-	-	17	17	-	-
Florida, Northern	-	-	-	-	-	-	-	-	-	-	-	-
Florida, Middle	4	4	-	-	-	-	-	-	9	7	-	2
Florida, Southern	2	2	-	-	-	-	-	-	2	2	-	-
Georgia, Northern	No February report to date.											
Georgia, Middle	-	-	-	-	-	-	-	-	-	-	-	-
Georgia, Southern	4	2	-	2	4	4	-	-	3	-	-	3

April 5, 198

Additional Judgeships Required
Assuming Transfer of 25, 20, 15, and 10 Percent of Adversary Proceedings
From U.S. Bankruptcy Courts
(Data for the Year Ended June 30, 1982)

Page 1

Circuit and District	Existing Judgeships	Total Civil and Criminal Weighted Filings	Total Adversary Proceedings Filed	Judgeships Approved by Judicial Conference September 1982	Additional Judgeships Required* with all Civil and Criminal Weighted Filings plus			
					25% of Adversary Proceedings	20% of Adversary Proceedings	15% of Adversary Proceedings	10% of Adversary Proceedings
Total	515	213,335	138,963	51	165	152	130	121
DC	15	5,355	349	-	0	0	0	0
1st Cir.	23	8,863	3,776	3	5	5	5	5
ME	2	476	531	-	0	0	0	0
MA	10	4,750	1,709	2	3	3	3	3
NH	2	872	396	-	1	1	1	1
RI	2	1,022	520	1	1	1	1	1
PR	7	1,743	620	-	0	0	0	0
2nd Cir.	50	20,982	7,368	5	9	9	9	8
CT	5	2,800	1,388	1	3	3	3	3
NY, N	3	1,488	1,131	1	2	2	2	1
NY, E	10	4,700	1,731	2	3	3	3	3
NY, S	27	10,314	1,767	-	0	0	0	0
NY, W	3	1,218	1,162	1	1	1	1	1
VT	2	462	189	-	0	0	0	0
3rd Cir.	50	17,523	11,876	3	7	6	5	4
DE	3	714	126	-	0	0	0	0
NJ	11	5,280	4,049	3	5	5	4	4
PA, E	19	7,239	3,060	-	2	1	1	0
PA, M	5	1,610	1,455	-	0	0	0	0
PA, W	10	2,680	3,181	-	0	0	0	0
[illegible]	2	-	5	-	0	0	0	0
Cir.	44	16,438	11,543	3	9	7	5	5
MD	9	3,438	2,600	1	2	1	1	1
NC, E	3	1,269	978	1	1	1	1	1
NC, M	3	744	813	-	0	0	0	0
NC, W	3	987	1,294	-	1	1	0	0
SC	8	2,928	1,356	-	1	0	0	0
VA, E	8	3,664	1,831	1	3	3	2	2
VA, W	4	1,572	1,250	-	1	1	1	1
WV, N	2	531	803	-	0	0	0	0
WV, S	4	1,305	618	-	0	0	0	0
5th Cir.	57	26,936	7,613	7	21	20	19	18
LA, E	13	5,187	407	-	1	1	1	1
LA, M	2	808	269	-	1	1	1	1
LA, W	5	2,125	412	1	1	1	1	1
MS, N	2	1,164	497	1	2	2	2	2
MS, S	3	2,028	753	2	3	3	3	3
TX, N	9	4,410	2,191	-	4	4	3	3
TX, E	4	2,548	279	2	3	3	3	3
TX, S	13	6,032	1,662	-	4	3	3	3
TX, W	6	2,634	1,143	1	2	2	2	1
6th Cir.	51	23,146	18,038	6	23	22	18	18
KY, E	5.5	1,343	888	-	0	0	0	0
KY, W	3.5	1,547	777	1	1	1	1	1
MI, E	13	6,721	2,913	2	6	6	5	5
MI, W	4	1,804	2,282	-	2	1	1	1
OH, N	10	4,370	4,762	1	4	4	3	3
S	6	3,276	2,166	-	4	4	3	3
[illegible]	3	1,856	2,308	1	3	3	2	2
M	3	1,378	834	-	1	1	1	1
TN, W	3	1,361	1,818	1	2	2	2	2

Additional Judgeships Required
Assuming Transfer of 25, 20, 15, and 10 Percent of Adversary Proceedings From U.S. Bankruptcy Courts
(Data for the Year Ended June 30, 1982)
(continued)

Circuit and District	Existing Judgeships	Total Civil and Criminal Weighted Filings	Total Adversary Proceedings Filed	Judgeships Approved by Judicial Conference September 1982	Additional Judgeships Required* with all Civil and Criminal Weighted Filings plus 25% of Adversary Proceedings	20% of Adversary Proceedings	15% of Adversary Proceedings	10% of Adversary Proceedings
7th Cir.	36	18,322	11,942	6	21	20	19	17
IL, N	16	10,224	4,932	4	13	13	12	11
IL, C	3	1,086	1,163	-	1	1	1	1
IL, S	2	1,086	572	1	2	1	1	1
IN, N	4	1,628	769	1	1	1	1	1
IN, S	5	2,060	2,546	-	2	2	1	1
WI, E	4	1,536	1,636	-	1	1	2	1
WI, W	2	902	324	-	1	1	1	1
8th Cir.	35	13,964	9,415	2	12	12	11	9
AR, E	4	1,644	590	-	1	1	1	1
AR, W	2	800	351	1	1	1	1	1
IA, N	1.5	825	1,040	-	1	1	1	1
IA. S	2.5	955	680	-	1	1	1	1
MN	6	3,012	1,380	-	3	3	3	2
MO, E	5	2,895	1,238	1	3	3	3	3
MO, W	6	2,124	2,098	-	1	1	1	0
NE	3	1,047	880	-	1	1	0	0
ND	2	484	362	-	0	0	0	0
SD..........	3	678	798	-	0	0	0	0
9th Cir.	75	29,020	36,402	9	31	27	21	19
AK	2	632	866	1	1	1	1	1
AZ	8	2,152	1,618	-	0	0	0	0
, N	12	4,704	5,118	-	3	3	2	2
, E	6	2,046	4,004	-	2	2	1	1
, C	17	8,398	15,829	4	14	12	10	8
CA, S	7	2,240	2,334	-	1	0	0	0
HI	2	814	328	1	1	1	1	1
ID	2	664	873	-	1	1	0	1
MT	2	804	329	1	1	1	1	0
NV	3	1,380	1,060	-	1	1	1	1
OR	5	2,195	1,351	-	2	1	1	1
WA, E	2	786	890	-	2	2	1	1
WA, W	5	2,205	2,377	2	1	1	1	1
GU	1	-	16	-	2	2	2	2
NMI.........	1	-	-	-	0	0	0	0
					0	0	0	0
10th Cir. ...	27	12,203	8,035	2	12	11	9	9
CO	6	2,754	2,720	-	3	3	2	2
KS..........	6	2,060	1,063	-	2	1	1	1
NM	4	1,360	947	-	0	0	0	0
OK, N	2.67	948	748	-	1	1	0	0
OK, E	1.67	573	138	-	0	0	0	0
OK, W	3.67	2,455	348	1	3	3	3	3
UT	3	1,536	1,336	-	2	2	2	2
WY	1	517	126	1	1	1	1	1
11th Cir. ...	52	20,383	12,516	5	15	13	9	9
AL, N	7	2,004	1,636	-	2	2	1	1
AL, M	3	1,065	618	-	1	0	0	0
AL, S........	2	1,004	737	1	2	2	1	1
FL, N	3	813	314	-	0	0	0	0
FL, M	9	3,340	1,971	-	1	1	0	0
L, S........	12	4,632	993	3	3	3	3	3
, N	11	4,158	3,971	-	2	2	1	1
, M	2	1,206	1,638	1	3	2	2	2
A, S	3	1,290	618	-	1	1	1	1

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* Judgeships required, including 51 (43 permanent and 8 temporary) positions recommended by the Judicial Conference in September 1982.

JUDICIAL CONFERENCE FORMULATION OF RECOMMENDATIONS FOR ADDITIONAL JUDICIAL POSITIONS FOR THE UNITED STATES COURTS OF APPEALS AND DISTRICT COURTS

INTRODUCTION

Under section 331 of Title 28 of the United States Code, the Judicial Conference of the United States is statutorily required to "make a comprehensive survey of the condition of business in the courts of the United States" and to "submit suggestions and recommendations to the various courts to promote uniformity of management procedures and the expeditious conduct of court business". The Conference today consists of the Chief Justice, who is the Presiding Officer, the Chief Judge of the Court of Appeals for the Federal Circuit, the chief judges of the twelve courts of appeals of the regional judicial circuits, and twelve district court judges, each of whom is chosen by his district court colleagues within each regional judicial circuit to serve a three-year term as a member of the Conference. That panel of twenty-six judges is the highest administrative and policy formulating unit within the judicial branch. It has frequently been described as comparable to the President's cabinet in the Executive Branch, or as "a board of directors for the Federal judiciary," and occasionally has been compared to "party caucuses" in Congress.

Under 28 U.S.C. §331, the Chief Justice, as Presiding Officer, is expressly required to "submit to Congress an annual report of the proceedings of the Judicial Conference and its recommendations for legislation." In practice, the Conference usually meets in formal "Proceedings" twice each year. Printed reports of business conducted at each "Proceeding" are routinely filed with Congress as printed. The reports for each calendar year are also incorporated in a single-volume "Annual Report of the Director of the Administrative Office of the United States Courts", which is also routinely filed with Congress.

Specific numbers of permanent judicial positions for the individual courts of appeals and district courts of the United States are statutorily authorized under sections 44 and 133 of Title 28 of the United States Code. From 1948, when Title 28 was revised and recodified, through 1978, when sections 44 and 133 were last amended, Congress has generally responded to the need for additional judicial positions by processing "omnibus judgeship bills". During that 30-year period, six omnibus bills were enacted. In all six instances, recommendations for additional judicial positions, formulated by the Judicial Conference, were the basis for action by the Senate and House Judiciary Committees. Although modified to some extent in each instance, those recommendations were usually extensively reflected in each judgeship Act.

For purposes of explaining the development of the processes and procedures which are presently used by the Judicial Conference in formulating recommendations, there may be some value in first reviewing the 30-year period between 1948 and 1978 in two parts: the period from 1948 through 1963, and the period from 1963 through 1978.

1948 - 1963

In the first fifteen-year period following recodification of Title 28, the Conference routinely evaluated the need for additional judicial positions at each of its biannual meetings, and, at least annually, notified Congress of needed revisions in sections 44 and 133 of Title 28. In essence, Conference recommendations for additional judicial positions were formulated as an incidental consequence of the Conference comprehensively surveying "the condition of business in the courts of the United States" in conformity with its statutory responsibility under section 331 of Title 28. With rare exceptions, however, the House and Senate Judiciary Committees usually were unable to respond to annual requests for additional positions. As Conference requests sequentially accumulated, expressions of concern by individual Members of Congress, academicians, and the Department of Justice would eventually prompt development of an "omnibus bill". In the fifteen-year period prior to 1963, three such bills were developed and enacted. In 1948, the number of circuit judges authorized under section 44 was 59, and the number of district judges authorized under section 133 was 186. Omnibus bills enacted in 1949, 1954, and 1961 added a total of 19 additional circuit positions and 109 additional district positions.

The omnibus bill of 1961 was then the largest judgeship bill in history, creating at one time 65 additional district positions and 10 additional circuit positions. Both Judiciary Committee reports emphasized the extent to which the preceding seven-year period of inactivity had contributed to a condition of caseload congestion which had rendered compelling the creation of such a large number of positions at one time. While both the Judiciary and the Department of Justice had strongly supported the 1961 legislation, both were then faced with responding immediately to the consequences of that large an infusion of additional judicial positions. Commentators all agreed that a better method was needed for responding to the Federal courts' "manpower requirements" on a regular basis.

1963 - 1978

Within two years, however, individual districts and circuits were actively seeking Judicial Conference recommendations for additional judicial positions. Cognizant of a perceived need for a more organized framework within which Congress could evaluate such recommendations, the Conference, in September of 1964, resolved to conduct detailed nationwide studies of judgeship needs at four-year intervals; by "packaging" additional judgeship recommendations in that manner, the Conference hoped to facilitate Congressional review and final action and alleviate problems encountered by Congress, the Judiciary, and the Executive in responding to the consequences of large "omnibus bills".

In March of 1965, the Conference acted upon the first such study, recommending 3 additional circuit court positions and 31 additional district court positions. When Congress had not yet acted on those recommendations after one year, individual courts petitioned the Conference to both notify Congress of their pressing needs and to revise the recommendations in light of developments during the eighteen-month period. In March of 1966, following extensive discussion, the Conference deliberately chose to rely upon the 1965 recommendations and to petition Congress only at periodic -- and predictable -- intervals. Ironically, within one week Congress enacted an omnibus judgeship bill creating 6 additional circuit positions and 30 additional district positions.

In February of 1968, again petitioned by individual courts to seek additional authorizations from Congress, the Conference again reaffirmed its commitment to forwarding recommendations based upon national studies at four-year intervals. A four-year study, which was then scheduled to begin in three months, was routinely undertaken, and findings were reported to the Conference in September. At its Proceedings in September of 1968, however, the Conference -- again ironically -- found itself confronted with the reality of Congress having enacted a special circuit judgeship bill in June, creating 13 additional court of appeals positions. In light of that Congressional action, the Conference chose to defer requests which otherwise would have been filed in January of 1969 for the courts of appeals. It nevertheless approved recommendations filed by its Court Administration Committee for 66 additional district court positions.

In the course of the September 1968 consideration discussion, several members of the Conference strongly recommended that the Conference adopt, as a formal policy, the practice of recommending additional positions based upon a "projection methodology". Advocates of that approach justified it by citing the "lag time" between the filing of Conference recommendations with Congress and final Congressional action, as well as the "lag time" between Congressional action and the actual entry on duty of confirmed judicial personnel following creation of the positions. While the Conference agreed to assess caseload trends -- and projections of such trends into the future -- as *one* factor among many in its studies, it reaffirmed its basic belief that requests should *generally* be founded upon identifiable *current* needs.

In 1970, Congress responded to the Conference's 1968 recommendations by enacting an omnibus bill creating an additional 63 district court positions. Ideally, the next "four-year", or "Quadrennial", study would have occurred in 1972. Mounting caseload pressures within the courts of appeals, however, resulted in a series of emergency requests being placed before the Conference at each of its meetings beginning in March of 1969. Simultaneous Congressional interest in possible realignment of the Fifth and Ninth Circuit Courts of Appeals was also motivated by recognition of the exploding appellate caseload burden. Seeking to rationally respond to that pressure, the Conference, in

October of 1971, requested 10 additional appellate court positions, but deliberately reduced the number of positions which both the Fifth and Ninth Circuits then clearly needed to insure that the number of positions in each court of appeals would not exceed fifteen. One year later, acting upon the results of its scheduled Quadrennial Survey, the Conference also recommended 50 new additional district positions and reaffirmed its recent emergency request for 10 courts of appeals positions. Although responsive action was taken by both Judiciary Committees, final legislation was not enacted.

As a direct consequence of Congress not having acted to create new circuit court positions since 1968 and new district court positions since 1970, the 1976 "Quadrennial Survey" resurrected the problem which had caused extensive expressions of concern following enactment of the 1961 omnibus bill. In September of 1976, the Conference decided that it could not avoid recommending creation of the greatest number of additional judicial positions at one time in the nation's history. Anticipating the inevitable consequences if that recommendation were favorably acted upon by Congress, however, the Conference abandoned its commitment to "quadrennial" studies. It resolved to conduct studies every two years. The first such "biennial" study was scheduled to commence in 1979, with resulting recommendations scheduled for adoption by the Conference at its September 1980 Proceedings.

On February 9, 1977, the Conference formally transmitted to Congress a draft bill for the creation of 106 permanent district court positions and 25 permanent circuit court of appeals positions. Almost two years later, on October 19, 1978, the Omnibus Judgeship Act of 1978 authorized 113 district court positions and 35 courts of appeals positions. In one dramatic -- but necessary -- response to the courts'needs, Congress increased the number of Federal judgeships by approximately thirty-three percent.

Congress' action in 1978 again led to expressions of concern similar to those which followed enactment of the 1961 omnibus bill. Large increments at both court levels generated problems for all three branches of the Government. The Judiciary's Federal Judicial Center, responsible for conducting training seminars for new judges, resorted to emergency measures to educate and train large numbers of newly appointed personnel. The Department of Justice instituted emergency measures to perform its role in the nominating process. The Senate Judiciary Committee invested an unprecedented number of hours during the 96th Congress in conducting nomination hearings. The consequences of Congress having postponed the creation of additional district court judgeships for an eight-year period and additional circuit court judgeships for a ten-year period became painfully obvious to all three branches.

HOW THE CONFERENCE HAS FORMULATED CURRENT RECOMMENDATIONS

Experience gained by the Conference during the period from 1964 through 1976 in conducting four "quadrennial surveys" directly influenced the choice of processes and procedures used in conducting the 1979 and 1981 "biennial surveys", which resulted in recommendations approved by the Conference at its September 1980 and September 1982 Proceedings.

The Judicial Conference's substantive work is conducted by means of a committee system somewhat similar to Congress' committee system. Since the middle sixties, development of judgeship recommendations has been within the jurisdiction of the Committee on Court Administration, and all preliminary work has been performed by that Committee's Subcommittee on Judicial Statistics.

On May 21, 1979, that subcommittee approved the text of a letter to every court announcing the survey and forms for tabulating specific data to be used in evaluating the workload of each court. On June 25, 1979, supporting Administrative Office staff issued the subcommittee's letter. Each court was encouraged to submit a written justification for requested additional positions, designed to supplement information presented in the standardized forms. Upon receipt of each court's response, Administrative Office staff prepared complete statistical profiles for every court (including those which were *not* requesting additional positions) and preliminary analyses of all materials provided by individual courts. In November of 1979, the subcommittee reviewed those materials and formulated *preliminary* recommendations for additional judicial positions. The subcommittee's findings were immediately forwarded to the judicial councils of the eleven circuits which, under 28 U.S.C. §332, are statutorily responsible for "the effective and expeditious administration of the business of the courts" in each circuit. Each district court requesting additional positions was simultaneously notified of that referral and advised to forward its comments directly to its circuit council.

On May 19-20, 1980, the subcommittee reviewed all comments filed by courts and councils in response to the November 1979 preliminary recommendations, plus updated statistical profiles prepared by the Administrative Office. *Final* recommendations for additional positions were then approved by the subcommittee. Copies of a report of the subcommittee's action were then forwarded to the Court Administration Committee members, each circuit council, and each court. On July 28-29, 1980, the Court Administration Committee evaluated the subcommittee's report, revising recommendations where it believed revision was warranted, and approved those revised recommendations. Those pages from the Committee's report to the Judicial Conference submitting the Committee's action for Conference approval are attached as Attachment "A"; tables included among those pages summarize the number of positions requested by each court, approved by the subcommittee, and approved by the Court Administration Committee. On September 24, 1980, the Conference approved the recommendations filed by the Committee for eleven additional permanent and three temporary judgeships in eight of the eleven courts of appeals and for twenty-four additional permanent and six temporary judgeships in twenty-five district courts. See *September 1980 Report of the Proceedings of the Judicial Conference of the United States*, at 65-67, reproduced, *infra*, as Attachment "B".

In May of 1981, the Conference commenced the same series of survey events which had been commenced in May of 1979, resulting in additional recommendations being approved by the Judicial Conference in September of 1982. Pages from the Court Administration Committee's Report to the Conference and a report of the Conference's action are attached as Attachment "C".

Given the extensive scope of Congressional review of past Conference recommendations during the Ninety-third, Ninety-fourth, and Ninety-fifth Congresses, the Conference in September of 1980 not only authorized the Director of the Administrative Office to transmit to Congress a draft bill embodying its recommendations, it also specifically authorized the simultaneous transmittal of "statements of justification" for recommendations approved for each court. Designed to explain which factors among the many evaluated most directly influenced the decision to recommend additional positions for specific courts, those "justification statements" will also hopefully reduce the burden borne by both Congressional Judiciary Committees in processing a bill through hearings and "mark-up".

FACTORS WHICH ARE EVALUATED IN FORMULATING RECOMMENDATIONS

Statistical Information

The Administrative Office annually tabulates extensive data related to the processing of cases in all Federal courts in two principle volumes: The *Annual Report of the Director of the Administrative Office of the U. S. Courts* and *Management Statistics for United States Courts*. Much of the information tabulated and reported in the Director's *Annual Report* is prepared in compliance with statutory requirements or directives from Congress. Most of the remaining data reported in that volume, and the material collected in *Management Statistics*, is used by the Judicial Conference and the circuit judicial councils in performing their statutory responsibilities for the administration of the courts. Without doubt, not all of the data reported in those two volumes is directly related to evaluating the need for judgeships. Certain statistical information is, however, helpful in framing a "one-dimensional" profile of a court's "workload". Information published in *Management Statistics*, when supplemented by material in the *Annual Report*, does provide a "threshold measure" of the extent to which an individual court's work exceeds that court's judicial resources.

Statistics and the Courts of Appeals

The number of appeals filed, the number terminated, and any differential between the two on an annual basis provides a basic measure of the quantity, or volume, of "cases" before a court of appeals, and the extent to which that volume of work is growing over time. If the number of appeals is increasing, terminations are holding to a constant level or increasing slightly, and pending cases are nevertheless increasing, then a "backlog" is developing. If that pattern of growth continues, an individual court will eventually be in the position of never being able to "catch up" unless additional judges are found to do the work. Whenever possible, "visiting judges" are assigned to the court to provide help. In each court of appeals, however, there is a limit to the extent to which that type of assistance can be used; when most judges in the courts of appeals nationwide are heavily burdened with increasing "workloads", and most district judges within a circuit are also working to full capacity in their own courts, the number of potential "visitors" available to provide help is easily exceeded by the demands for their services. There are limits to the number of three-judge-panels active and senior circuit judges are able to serve upon within a finite period of time, and there are limits to the extent that their service can be "stretched" by substituting visiting judges as individual members of such panels. Statistical data provides a preliminary, and objective, measure of those limits.

Statistics and the District Courts

Knowing how many cases, civil and criminal, are being filed in a court, and how many are being terminated each year, permits *one* measurement of whether a court is keeping pace with its work; it provides a measure of the rate at which the number of "pending cases" -- or "backlog" -- is growing from one year to the next. Standing alone, however, that data reflects only a *quantity* of caseload work; it does not measure the difficulty a *trial court* faces in processing different types of cases. Obviously, an antitrust case is more difficult -- and more time-consuming -- than a petition for review of an administrative action involving entitlement to social security benefits; both are civil cases. Obviously, the prosecution of several defendants charged with criminal fraud committed in conjunction with a large business enterprise entails more time than prosecution of one individual defendant for auto theft; both are criminal cases. In recognition of that reality, the Federal Judicial Center has developed methods for "rating" the complexity of cases by type, and assigning "weighting factors" to identified types of cases. That exercise has resulted in a "weighted caseload" indicator which reflects the complexity of an individual court's "case mix".

The extent to which complex caseloads burden a given district court is frequently readily discernible in figures reflecting the number of trials conducted and the "median times" which elapse between filing and termination of cases. Given statutorily mandated time-frames under the Speedy Trial Act, resource allocation -- time spent by judges in trial -- must be carefully administered. In a small court having few judges, one complex civil trial effectively removes a judge from criminal work; if days are needed to complete that civil trial, the criminal "workload" must be borne by other judges. When all judges on a court are "juggling" full caseloads, and filings continue to increase, backlogs build. If "visiting judges" can be of help, they are requested; all too often they are not available. Statistical data thus provides a preliminary measure of each district court's ability to "cope" with the work before it.

Factors Other Than Statistical "Profiles"

As valuable as statistics are in establishing *basic* measures of workload, they do not reflect many factors which may impact upon an individual court's performance or influence the need for additional judicial assistance. For that reason, the Judicial Conference has never relied upon "data profiles" *alone* in recommending additional judicial positions. It has consistently used caseload, termination, and trial figures as one means of identifying objectively a court which *may* need help. In the years from 1973 through 1977, periodic Congressional efforts to employ statistics as *the determinative* yardstick were not successful; they were simply not adequate in and of themselves. Congress ultimately used them just as has the Judicial Conference -- to set a framework for evaluation and as one factor among many for assessment of a court's needs. While a critical part of the "script", statistics have not been definitively used by Congress or the Conference to "tell the whole story". Depending upon specific characteristics which influence individual courts, other factors often are as significant as statistics in both Conference evaluation and Congressional review.

In addition to the overall "weighted caseload" figure, which reflects the complexity of a court's general caseload, the Conference's evaluation always includes inspection of the actual "case mix" of current annual filings -- how many civil cases are antitrust or civil rights cases, and how many criminal cases are complex fraud or narcotics distribution cases involving multi-defendants. The Conference tries to assess the extent to which one or more prolonged civil or criminal trials effectively "remove" a single judge from "circulation", and what consequential burdens are imposed upon his or her colleagues in relation to Speedy Trial Act requirements and delays in civil case termination.

Also considered are the "demographic characteristics" of a court. A large metropolitan-based district court cannot be realistically evaluated in the context in which a small, largely rural-based, court is evaluated. Many factors which influence the conduct of business in the United States District Court in Los Angeles have little influence on the conduct of business in the United States District Court in Alaska. More complex cases are generally filed in metropolitan courts, attorneys practicing before those courts more often have "calendar conflicts" due to cases they are engaged in at the state and local levels, and judicial calendaring for courts with large numbers of judges is more difficult. A large "rural" district's judges may have to travel frequently to serve widely distributed court locations, and often cannot rely upon any means of transportation other than private automobile.

Other factors may be directly relevant only to a given court. The Conference recognizes the necessary "delay" encountered by a court which processes a high percentage of criminal cases involving defendants or witnesses who require language translation services. The Conference also considers the impact upon a court of vacancies in judicial positions; the more prolonged the vacancy -- and the smaller the court -- the greater the disruptive impact -- and often the more dramatic the development of a serious backlog in cases.

In summary, the Conference evaluates both (1) "objective factors", which are quantifiable and can be usefully reflected in data profiles, and (2) "subjective factors", which frequently can only be quantified roughly, yet are reflected in submissions received from individual courts and judicial councils in response to preliminary assessments based upon data profiles.

THREE POLICY DECISIONS WHICH ARE REFLECTED IN CONFERENCE RECOMMENDATIONS

In direct response to views expressed by the members of the House and Senate Judiciary Committees during their evaluation of Conference recommendations in the Ninety-fifth Congress, the Conference adopted three "rules of thumb" in formulating its September 1980 and September 1982 recommendations.

No Recommendation is Based Upon a "Projection Methodology"

Although efforts to develop a reliable method for "forecasting" judgeship needs to compensate for "lag time" between submission of recommendations by the Conference and final action by the Congress -- and between creation of the positions and the entry on duty of confirmed nominees -- were *theoretically* successful, that method was *not* used in 1979 and 1980 to develop the 1980 recommendations. While recommendations formulated in 1972 using that method were found in 1976 to have been no more than marginally inaccurate (within fifteen percent above or below *actual* subsequent caseload figures) in eighty-four percent of the districts in which they were used (42 among 50), the Conference decided not to use that method at all in its last two surveys of judgeship needs. While the "margin of error" may have been small in theory, the Conference agreed with Members of Congress who expressed the view that judgeships should only be created on the basis of a demonstrated current need and not created on the basis of a "projected future need".

No "Permanent" Positions Are Recommended Only Due to Backlog

Where a court has developed a burdensome backlog of such size that visiting-judge assistance cannot reasonably be relied upon to reduce it, additional judicial help must be provided. If such a court has not, however, also experienced a large enough regular increase in case filings to clearly warrant additional permanent positions, the Conference has recommended the creation of "temporary" positions -- modeled upon those included in the last omnibus act at the suggestion of the House Judiciary Committee. As in that instance, the existence of the "temporary" positions the Conference is recommending would be insured for a minimum five-year period, but would "evaporate" upon the first vacancy arising after the fifth anniversary of the date upon which the "temporary" position was created.

Only Positions Which Are Demonstrably Necessary Now Are Recommended

Although individual circuits in 1980 requested a total of fifteen permanent positions and three temporary positions, the Conference recommended only eleven permanent and three temporary positions. Although individual districts in 1980 requested a total of forty-five permanent positions and one temporary position, the Conference recommended only twenty-four permanent and six temporary positions. In 1982, the Conference received requests from districts for fifty-seven permanent and eight temporary positions and approved only forty-five permanent and eight temporary positions.

Cognizant of Congress' concern that the number of judicial positions cannot be increased infinitely -- a concern the Conference shares -- the 1980 and 1982 recommendations were deliberately held to the "bare bones minimum" necessary to avoid identifiable serious case processing congestion in individual courts. While minimum recommendations may require individual judges to continue to carry unreasonably heavy caseload burdens, and may also severely restrict a court's management flexibility, the Conference tried to nevertheless avoid recommending additional positions unless a court's ability to serve the public adequately and responsibly would be clearly reduced to an unacceptable level.

PREPARED STATEMENT

OF

HONORABLE ROBERT E. DEMASCIO
CHAIRMAN
COMMITTEE ON ADMINISTRATION OF THE BANKRUPTCY SYSTEM
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

WEDNESDAY
APRIL 6, 1983

ADDITIONAL STATEMENT ON BANKRUPTCY JUDGESHIPS

My name is Robert E. DeMascio. I am a district judge for the Eastern District of Michigan, at Detroit. I also serve as the Chariman of the Committee on the Administration of the Bankruptcy System of the Judicial Conference of the United States.

As chairman of the Bankruptcy Committee, I would like to address briefly the issue of the bankruptcy judgeships created in Title II of the Thurmond-Heflin bankruptcy bill. The creation of a fixed number of bankruptcy judgeships in each judicial district by statute is a mistake in my opinion.

First, the proposal is not practicable in light of the fluctuating nature of the bankruptcy caseload and the compelling need to constantly monitor that caseload and adjust the numbers of judgeships allocated to the several districts.

Second, the proposal is not prudent in light of the decision that the Congress must make, in the next year, as to the best administrative arrangement for handling bankruptcy cases initially.

Finally, the proposal may be constitutionally infirm in light of the discussion in Part IV of the plurality opinion in *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. ____, 102 S. Ct. 2858 (1982).

EXISTING ALLOCATIONS

Bankruptcy caseloads fluctuate, reflecting generally the economic conditions in the particular district and nationally. The Judicial Conference, through the Bankruptcy Committee, now reviews the needs of each district court for bankruptcy judgeships and can adjust the numbers of positions for that district to accommodate increased caseloads. Before 1979 the Conference also had the authority to decrease the allocation of judgeships as caseload demands slackened. Surveying the needs of each court had been a continuing and evolving process under the former bankruptcy laws.

The general statutory guidelines for this survey process were set forth in former title 11:

> The Director [of the Administrative Office of the United States Courts] shall recommend to the district judges, the councils and the conference the number of referees to hold appointment and the territory which each shall serve, after he has made a careful study of the conditions throughout the country as a whole, and of local conditions, including the estimated amount of funds available for salaries, the area and population to be served, the transportation and communications facilities, the previous types and amount of business under this title in such areas and where such business is centered, the existing personnel, and any other material factors. . . . [11 U.S.C. 65(a)(1976)]

During the current transition period under the 1978 Bankruptcy Reform Act (Public Law No. 95-598, 92 Stat. 2549)(November 6, 1978), the Bankruptcy Committee has adopted a very cautious approach in approving new full-time bankruptcy judgeships, mindful that the present system is due to terminate on April 1, 1984. However, crushing caseload burdens have required that some additional positions be authorized.

In fact, as recently as last September the Conference authorized the conversion of 7 part-time judgeships to full-time positions. These 7 positions, which will be filled on completion of the appropriate appropriations process, are as follows:

District	Location
Delaware	Wilmington
New Mexico	Albuquerque
Texas, Eastern	Tyler
Texas, Northern	Lubbock
Vermont	Rutland
Virginia, Western	Harrisonburg
Wisconsin, Western	Eau Claire

Four of these positions have been incorporated in the Thurmond-Heflin bill. Three have not.

EXISTING CASELOAD NEEDS

Section 406 of the 1978 Bankruptcy Reform Act required that a study of the judgeships needed under that law be conducted by the Director of the Administrative Office of the United States Courts and that the Judicial Conference formally recommend the appropriate number of judgeships, based on that survey. The results of that survey and the Conference's recommendations for bankruptcy judgeships were filed with the President and the Congress on December 30, 1982.

Of necessity that survey process could not provide the same time-proven recommendations as does the "biennial judgeship survey" process. In attempting to measure the bankruptcy courts' needs, we were working with information drawn from courts still moving through "transition period" adjustments to the changes made by the 1978 Bankruptcy Reform Act. Although we did have the benefit of the preliminary findings of the Federal Judicial Center's first time survey of the bankruptcy judges' workloads, that study also was based on only the initial impact of those changes.

However, the surveys included personal interviews with each bankruptcy judge. Those judges estimated a need for 285 to 325 judgeships. The judicial councils of the circuits were also asked to comment on the appropriate number of positions. The Administrative Office's assessment led to a conclusion that 299 positions were needed. The "Director's Advisory Committee" of seven bankruptcy judges (See section 407 of Public Law 95-598) concluded that 303 positions would be needed. My Committee recommended 300 positions to the Judicial Conference. In September the Conference remanded the survey to my Committee because additional adjustments appeared to be necessary. The Conference announced at that time that a minimal number of 300 positions were necessary, given the requirements of the statutory mandate placed upon the Conference by the 1978 Reform Act and existing administrative and judicial workload burdens, as assessed by the bankruptcy judges themselves.

The final report on the survey concluded that 304 bankruptcy judgeship positions should be created *if the structural and jurisdictional arrangement authorized by the 1978 Act remained unchanged.* These recommendations retain their essential validity under the Thurmond-Heflin bill because the bankruptcy judges, although working under revised jurisdictional arrangements, continue to perform, as a practical matter, almost all of the same duties -- both administrative and judicial -- as they would under the 1978 Bankruptcy Reform Act. The positions recommended by the Conference in that report are set out in the attached table together with the positions currently authorized and the positions that would be authorized under this legislation. Also attached is a copy of the transmittal of the Conference's recommendations last December.

FLUCTUATIONS

The problem in evaluating bankruptcy judgeship needs lies with the fluctuating caseload demands on such officers. District judges handle a wide variety of cases. There is some tendency, as the volume of litigation in one area changes, that countervailing changes occur in other types of litigation. Bankruptcy judges' work, however, arises from a single basic source. As economic conditions change there is a change in the caseloads of bankruptcy judges. Their caseload can be viewed as being a sort of roller coaster.

The 229 full-time judges now authorized cannot handle the caseload that is coming into the courts today. Consequently, today's litigants are being deprived of expeditious resolution of bankruptcy cases because of the inadequacy of resources to dispose of the business promptly. Today we need the 304 positions recommended by the Judicial Conference if these litigants are to receive the sort of prompt resolution of their cases that everyone appears to agree they should have.

The dilemma facing the Congress in authorizing, by statute, bankruptcy judgeships is that the volume of litigation may well decrease in the next few years. Creating sufficient judgeships to handle today's caseload may well overstaff the courts tomorrow. This dilemma, however, is the Congress' own creation. The problem would not exist in the same dimensions if the Judicial Conference were to retain the authority to establish and abolish bankruptcy judgeship positions as had been the case.

UNITED STATES TRUSTEES

Presently 10 offices of United States Trustee operate in 18 judicial districts under the auspices of the Department of Justice. That program will automatically be terminated on April 1, 1984, unless the Congress determines that it should be extended. The Department of Justice is required to report to the Congress by next January 3rd as to the desirability of extending the program under section 408 of the 1978 Bankruptcy Reform Act.

Nearly everyone agrees that the Trustee program provides a beneficial service in the performance of trustee duties in certain cases and, perhaps more importantly, in the close supervision of private trustees in other cases. The authors of the 1978 legislation viewed the program as an essential step toward the goal of removing bankruptcy judges from their role in case administration -- a goal ardently sought by many since the report of the Bankruptcy Commission in 1973. The Department of Justice, however, has expressed repeatedly its concern that conflicts-of-interest are created by staffing these offices under the Department and has even sought to have funding for the program withheld from its budget.

Since the idea was proposed in the consideration of the 1978 Bankruptcy Reform Act, the Judicial Conference has also been concerned that the position ought not to be placed within the Department of Justice. The Conference has been very supportive of the concept of separating the bankruptcy judges from any responsibility for the administration of estates, but has maintained that the new position created to accomplish that objective should be within the Judicial Branch. The proposal for a bankruptcy administrator contained in S. 443 was just such a position. That position would have assumed from the United States Trustees the responsiblity for supervision of the administration of the estates. The proposed bankruptcy administrator would also have been empowered to actually enter appropriate orders in any matter arising in the case that was not in fact contested. Thus, bankruptcy judges would be relieved of the responsibility for the routine orders in such cases that are time-consuming when the large volumes of uncontested matters are considered.

The Administrative Office has estimated, based on the fact that the United States Trustee pilot program now operates in districts accounting for about 28 per cent of the bankruptcy caseload at a cost of about 7.5 million dollars, that expansion of the program nationally would cost roughly 26 million dollars. Establishing the office of bankruptcy administrator, conversely, by drawing on existing clerks' office personnel and upgrading the responsibilities now performed in those offices could be achieved at a cost of only about 17 million dollars nationally.

Certainly there will be considerable pressure for the Congress to enact some form of administrator next year, whether it is an extension of the United States Trustee or the Conference's proposal or some similar entity yet to be advanced. The creation of such a position, if granted sufficient powers to provide meaningful service, will undoubtedly affect the number of bankruptcy judgeships that should be created, particularly on a district-by-district basis. It is simply not prudent for the Congress to attempt to establish these judgeships by statutorily providing specific Presidential appointments without having resolved the question of case administration.

CONSTITUTIONAL INFIRMITY

The plurality opinion in the Northern Pipeline case has raised the distinct possibility that the system of Presidentially appointed bankruptcy judges to serve in "adjunct" bankruptcy courts may be constitutionally infirm. The authors of the legislation have made substantial changes to the nature and powers of the office of bankruptcy judge. I am concerned, however, that these changes are not enough -- particularly in light of the discussion in Part IV of the Northern Pipeline decision.

Justice Brennan pointed out the critical need to distinguish between Congress' power to create adjuncts to Article III courts, and Congress' power to create Article I courts in limited circumstances. The opinion proceeded to discuss the circumstances under which a true adjunct to an Article III court could be established and function.

Of particular concern at the moment is the opinion's discussion of the use of magistrates in the district courts. That discussion is important because the bill would parallel the magistrates system in the use of bankruptcy judges in matters which have been recalled by the district judges. The Court discussed the ruling in the recent case of United States v. Raddatz, 447 U.S. 667 (1980) and noted that the validity of referrals to magistrates of responsibilities as fact-finders even in the adjudication of constitutional rights resulted from the fact that magistrates operate subject to sufficient control by Article III district courts that the "essential attributes of the judicial power" are retained in an Article III tribunal.

In contrast to the administrative placement of magistrates within the Federal judicial system so as to limit any conceivable danger of a threat to magistrates' independence from without the Judiciary, the plurality opinion observed, in footnote 31, several important distinctions in the case of bankruptcy judges:

> We note, moreover, that the 1978 Act made at least three significant changes from the bankruptcy practice that immediately preceded it. First, of course, the jurisdiction of the bankruptcy courts was "substantially expanded by the Act." H.R. Rep. No. 95-595, supra, p. 13 (1977). Before the Act the referee had no jurisdiction, except with consent, over controversies beyond those involving property in the actual or constructive possession of the court. 11 U.S.C. 46(b) (repealed). See MacDonald v. Plymouth Trust Co., 296 U.S. 263, 266 (1932). It cannot be doubted that the new bankruptcy judges, unlike the referees, have jurisdiction far beyond that which can be even arguably characterized as merely incidental to the discharge in bankruptcy or a plan for reorganization. Second, the bankruptcy judges have broader powers than those exercised by the referees. See infra at 34-35; H.R. Rep. 95-595, supra, p. 12 and nn. 63-68. Finally, AND PERHAPS MOST SIGNIFICANTLY, the relationship between the district court and the bankruptcy court was changed under the 1978 Act. Before the Act, bankruptcy referees were "subordinate adjuncts of the district courts." Id, at 7. In contrast, the new bankruptcy courts are "independent of the United States district courts." Ibid; Collier on Bankruptcy, # 1.03, at 1-9 (15th ed. 1981). Before the Act, bankruptcy referees were appointed and removable only by the district court. 11 U.S.C. 62 (repealed). And the district court retained control over the reference by his power to withdraw the case from the referee. Bkrptcy Rule 102. Thus, even at the trial stage, parties had access to an independent judicial officer. Although Congress could still lower the salary of referees, they were not dependent on the political branches of government for their appointment. To paraphrase JUSTICE BLACKMUN's observation in Raddatz, supra, the primary "danger of a 'threat' to the independence of the [adjunct came] from within, rather than without the judicial department." 447 U.S., at 685 (concurring opinion). [Emphasis added].

I recognize the work that has been done to conform the office of bankruptcy judge, and the powers exercised thereby, to the plurality opinion in Northern Pipeline. I am very concerned however, that not enough has been done to cure the constitutional infirmity that the Court identified in that case.

BANKRUPTCY JUDGESHIPS

Circuit and District	Presently Authorized	Provided in Senate Bill	Recommended by Judicial Conference
Total	228 + 12 P/T	230	264
District of Columbia	1	1	1
First Circuit	9 + 1 P/T	10	11
Maine	2	2	2
Massachusetts	4	4	5
New Hampshire	1 P/T	1	1
Rhode Island	1	1	1
Puerto Rico	2	2	2
Second Circuit	21	21	24
Connecticut	3	3	3
New York, Northern	2	2	3
New York, Eastern	6	6	6
New York, Southern	7	7	7
New York, Western	2	2	4
Vermont	1	1	1
Third Circuit	14 + 1 P/T	14	20
Delaware	1	1	1
New Jersey	5	5	8
Pennsylvania, Eastern	3	3	3
Pennsylvania, Middle	2	2	3
Pennsylvania, Western	3	3	5
Virgin Islands	1 P/T	-	-
Fourth Circuit	16	16	22
Maryland	3	3	4
North Carolina, Eastern	2	2	2
North Carolina, Middle	2	2	2
North Carolina, Western	1	1	2
South Carolina	2	1	2
Virginia, Eastern	2	3	4
Virginia, Western	2	2	4
West Virginia, Northern	1	1	1
West Virginia, Southern	1	1	1
Fifth Circuit	17 + 1 P/T	17	20
Louisiana, Eastern	2	2	3
Louisiana, Middle	1 P/T	1	-
Louisiana, Western	2	2	2
Mississippi, Northern	1	1	1
Mississippi, Southern	2	2	2
Texas, Northern	4	3	4
Texas, Eastern	1	1	1
Texas, Southern	3	3	4
Texas, Western	2	2	3
Sixth Circuit	31 + 2 P/T	30	40
Kentucky, Eastern	1	1	3
Kentucky, Western	2	2	3
Michigan, Eastern	4 + 1 P/T	4	6
Michigan, Western	2 + 1 P/T	2	4
Ohio, Northern	6	6	8
Ohio, Southern	7	7	8
Tennessee, Eastern	2	3	3
Tennessee, Middle	2	2	2
Tennessee, Western	3	3	3
Seventh Circuit	20 + 1 P/T	21	31
Illinois, Northern	8	8	10
Illinois, Central	2 + 1 P/T	2	3
Illinois, Southern	1	1	1
Indiana, Northern	2	3	3
Indiana, Southern	4	4	5
Wisconsin, Eastern	3	3	3
Wisconsin, Western	2	2	2
Eighth Circuit	17 + 1 P/T	17	20
Arkansas, Eastern	2	1	3
Arkansas, Western	-	1	-
Iowa, Northern	1	1	2
Iowa, Southern	1	1	2
Minnesota	4 + 1 P/T	4	3
Missouri, Eastern	3	3	3
Missouri, Western	3	3	4
Nebraska	1	1	2
North Dakota	1	1	1
South Dakota	1	1	1
Ninth Circuit	44 + 2 P/T	45	64
Alaska	1	1	2
Arizona	6	6	4
California, Northern	7	7	11
California, Eastern	4	4	5
California, Central	13	13	18
California, Southern	3	3	4
Hawaii	1	1	1
Idaho	1	1	2
Montana	1 P/T	1	1
Nevada	2	2	3
Oregon	4 + 1 P/T	4	5
Washington, Eastern	1	1	2
Washington, Western	4	4	5
Guam	0	-	-
No. Mariana Isl.	0	-	-
Tenth Circuit	15 + 2 P/T	15	20
Colorado	4	4	5
Kansas	3	3	4
New Mexico	2	1	2
Oklahoma, Northern	1 + 1 P/T	1	1
Oklahoma, Eastern	1 P/T	1	1
Oklahoma, Western	2	2	3
Utah	2	2	3
Wyoming	1	1	1
Eleventh Circuit	23	20	27
Alabama, Northern	5	5	5
Alabama, Middle	2	2	2
Alabama, Southern	2	2	1
Florida, Northern	1	1	1
Florida, Middle	5	3	4
Florida, Southern	3	3	5
Georgia, Northern	4	4	7
Georgia, Middle	2	2	2
Georgia, Southern	1	1	2

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS
WASHINGTON, D.C. 20544

WILLIAM E. FOLEY
DIRECTOR

PH F. SPANIOL, JR.
DEPUTY DIRECTOR

December 30, 1982

Honorable George Bush
President
United States Senate
Washington, D.C. 20510

Dear Mr. President:

On behalf of the Judicial Conference of the United States, I hereby transmit a report prepared by the Conference in compliance with provisions contained in Section 406 of Public Law No. 95-598, "The Bankruptcy Reform Act of 1978":

> Sec. 406. (a)(1) During the transition period, the Director of the Administrative Office of the United States Courts shall make continuing studies and surveys of conditions in the judicial districts to determine--
>
> (A) the number of bankruptcy judges of the United States bankruptcy courts established under section 201 of this Act that will be needed after March 31, 1984, to provide for the expeditious and effective administration of justice; and
>
> (B) the regular places of offices and the places at which courts shall be held.
>
> (2) In the course of any survey, the Director shall take into account local conditions in each judicial district, including the areas and the population to be served, the transportation and communications facilities available, the average number and types of bankruptcy cases filed and closed during the transition period, and number of cases pending and judicial matters heard, and any other material factors. The Director shall give consideration to suggestions from any interested parties.
>
> (b) Upon completion of the studies and surveys required by subsection (a) of this section, the Director shall report to the judicial councils of the circuits and the Judicial Conference of the United States his recommendations concerning the number of bankruptcy judges, their principal places of offices, and the places where court shall be held. The

> judicial councils shall advise the Conference, stating their recommendations and the reasons therefor. The Conference shall recommend to the Congress and to the President, before January 3, 1983, in light of the recommendations of the Director and the judicial councils, the number of bankruptcy judges of the United States bankruptcy courts established under section 201 of this Act that will be needed after March 31, 1984, and the locations at which they shall serve.

See 92 Stat. 2686. This report, in accordance with requirements stipulated in subparagraphs (A) and (B) of section 406(a)(1), contains both recommendations for 304 bankruptcy court judicial positions, which "will be needed after March 31, 1984" by the bankruptcy courts "established under section 201" of the 1978 Act, and recommendations for the locations at which incumbents serving in those positions shall serve.

In November 1981, with cooperation from the Administrative Office, the Federal Judicial Center developed evaluation criteria, which were then used to assess judicial resource needs for each bankruptcy court in every judicial district. Between September 1981 and March 1982 each incumbent full-time bankruptcy judge was personally interviewed to ascertain his or her assessment of the number of bankruptcy judicial positions needed and the locations at which services should be provided. Administrative Office staff analyzed related factors such as travel requirements and availability of existing or planned facilities. Based upon all information made available to me as a result of those studies and interviews, I formulated my recommendations and submitted them for review and comment by each bankruptcy judge and circuit judicial council.

On June 17-18, 1982, the Judicial Conference's Committee on Bankruptcy Administration -- consisting of one court of appeals judge, six district court judges, and three bankruptcy court judges -- reviewed my recommendations (which included a recommendation that 299 bankruptcy judicial positions be authorized), and circuit judicial council recommendations (which would have resulted in 321 bankruptcy judicial positions being authorized). The Committee approved recommendations for 300 bankruptcy judicial positions and related recommendations for locations at which the incumbents would serve.

During its meeting of September 22-23, 1982 the Judicial Conference discussed the recommendations presented by the Committee on Bankruptcy Administration, concluded that at least 300 judicial positions would be needed in 1984 *if the structural and jurisdictional arrangement authorized by the 1978 Act remained unchanged*, and referred -- for additional review by the Committee on Bankruptcy and final approval by the Conference's Executive Committee -- several positions upon which circuit council recommendations were at variance with recommendations filed by the Committee on Bankruptcy Administration. On October 21, 1982 the Committee on Bankruptcy Administration approved recommendations in compliance with the Conference's referral, and authorized the preparation of a report to the Executive Committee. That report was filed on November 12, 1982 and approved by the Executive Committee on November 21, 1982. Following the Executive Committee's action the Administrative Office commenced preparation of the report transmitted by this correspondence.

In meeting my statutory responsibility to file this report I must emphasize the basic purpose served by the report. As intended by Congress in 1978, this report anticipates the *full* implementation of the structural and jurisdictional provisions contained in the 1978 Act. As you know, the Supreme Court's decision in *Northern Pipeline Construction Co.* v. *Marathon Pipe Line Co. et al.*, ______ U.S. ______ 50 U.S.L.W. 4892 (Nos. 81-150 an 81-546, June 28, 1982), has invalidated aspects of the Article I bankruptcy court system authorized by the 1978 Act, and Congress has not yet been able to reach agreement upon corrective legislation. To the extent that a specialized bankruptcy court structure, *with the full jurisdictional authority contemplated by the 1978 Act*, may be authorized by corrective legislation, I believe the information provided by this report will be invaluable to Congress in its legislative efforts in the next few months.

The enclosed report reinforces a recommendation for more than 300 bankruptcy judicial positions approved in April of 1982 by a special committee of bankruptcy judges created under section 407(a) of the 1978 Act, and cited in the *Congressional Record* in August by the Chairman of the House Judiciary Committee. See 128 CONG. REC. H 5872 (daily ed., August 12, 1982). Although individual bankruptcy judges have expressed their disagreement with recent Judicial Conference proposals for remedial legislation in response to the Supreme Court decision in June, both the committee of bankruptcy judges created by Congress to facilitate full implementation of the 1978 Act and the Judicial Conference obviously agree that the purposes to be served by that Act -- if served by a specialized court structure such as or similar to the Article I structure provided by that Act -- will require at least 300 authorized bankruptcy court judicial positions.

Representatives of the Judicial Conference of the United States, and personnel of the Administrative Office, will, of course, be available to provide whatever assistance you may request in reviewing these statutorily required recommendations.

Sincerely,

William E. Foley
Director

Enclosure

QUESTION NO. 13: Mr. Macklin, you indicated in your testimony that the Judicial Conference has found it necessary to request from Congress an increase in the number of judgeships around the country as the Court's workload continues to rise. When these requests are made to the Judiciary Committee, are the Members of that Committee thoroughly briefed on the extent of your current space problems, the space requirements the additional judges will create, and the cost of meeting those requirements?

ANSWER: Since 1972 the Conference has routinely provided both Judiciary Committees with cost-estimate information relevant to the creation of additional judgeships. Those estimates include "space and facilities" costs. Attached is the most recent such document, filed in February. Since 1970 no judgeship legislation has been processed without the Judiciary Committees having available the information contained in the attachment.

COST COMPARISON

Dollars ($000)

	H.R. 3, 98th Congress			Judicial Conference Merger Proposal			H.R. 1401, 98th Congress*		
	Number of Judges	Amount		No. of Judges and Magistrates	Amount		No. of Judges and Magistrates	Amount	
		First Year	Recurring		First Year	Recurring		First Year	Recurring
Article III - bankruptcy @ $611,000 first year and $312,000 recurring	227	$ 93,297	$ 70,824	...	$	$	...	$.....	$.....
Chief Judge - 8 @ $43,000 first year and $39,000 recurring	...	344	312	...	.....	.....	...	.....	.....
Senior Judge - 20 @ $274,000 first year and $210,000 recurring	...	5,480	4,200	...	.....	.....	...	.....	.....
Additional district judges @ $429,000 first year and $323,000 recurring	...	.....	.....	114	48,906	36,822	...	.....	.....
Additional magistrates @ $253,000 first year and $178,000 recurring	...	.....	.....	50	12,650	8,900	...	.....	.....
120 bankruptcy administrator positions	...	.....	.....	...	8,976	8,976	...	.....	.....
Additional clerk of court	...	60	60	...	.....	.....	...	.....	.....
Subtotal	227	99,183	75,400	164	70,532	54,698	...	.....	.....
Cost for additional judges to fully implement the Bankruptcy Reform Act of 1978 - @ $611,000 first year and $312,000 recurring	77	31,647	24,024	...	.....	.....	...	.....	.....
Chief Judge - 12 @ $43,000 first year and $39,000 recurring	...	516	468	...	.....	.....	...	.....	.....
Subtotal	77	32,163	24,492	...	.....	.....	...	.....	.....
Total (A)	304	131,346	99,892	114	70,532	54,698	...	.....	.....
Savings of abolishing 222 bankruptcy judges and staff @ $199,000 recurring	-222	-44,178	-44,178	-222	-44,178	-44,178	...	.....	.....
Savings of not creating 5 existing bankruptcy judges and staff @ $278,000 first year and $199,000 recurring	-5	-1,390	-995	-5	-1,390	-995	...	.....	.....
Savings of not creating 77 existing bankruptcy judges and staff @ $278,000 first year and $199,000 recurring	-77	-21,406	-15,323	-77	-21,406	-15,323	...	.....	.....
Savings of abolishing 90 clerks of court @ $64,300	...	.....	.....	...	-5,787	-5,787	...	.....	.....
Savings of eliminating contract court reporters	...	-3,070	-3,070	...	-3,070	-3,070	...	.....	.....
Subtotal (B)	-304	-70,044	-63,566	-304	-75,831	-69,353	...	.....	.....
NET COST FOR BANKRUPTCY (A - B)		$+61,302	$+36,326		$ -5,299	$-14,655			
Additional circuit judges @ $427,000 first year and $317,000 recurring	...	.....	.....	24	10,248	7,608	...	.....	.....
Additional district judges @ $429,000 first year and $323,000 recurring	...	.....	.....	51	21,879	16,473	...	.....	.....
Subtotal (C)	...	.....	.....	75	32,127	24,081	...	.....	.....
NET TOTAL COST (A - B + C)					$+26,828	$ +9,426			

*Provisions in H.R. 1401, 98th Congress, merely clarify jurisdiction. They do not "restructure" existing district court bankruptcy "departments" at all. Therefore, no direct cost increases or cost offsets will be incurred.

Prepared by: A.O. Budget Branch
Date: February 21, 1983

Table 1
ADDED UNIT COST OF ESTABLISHING AN ARTICLE III
BANKRUPTCY JUDGESHIP AS CONTEMPLATED BY H.R. 3

Appropriation: Salaries and Expenses	Jan. 20 Unit Cost	H.R. 3 Unit Cost	Difference
Salary of the Bankruptcy Judge	$ 63,600	$ 69,500	$ +5,900
Agency contribution for retirement, life insurance, and health benefits	6,400	4,200	-2,200
TOTAL	70,000	73,700	+3,700
Bankruptcy Judges' Staff			
Salaries: Law Clerk, Grade JSP-12	29,374	29,374	.....
Law Clerk, Grade JSP-12	.....	29,374	+29,374
Secretary, Grade JSP-10	22,307	22,307	.....
Court Reporter, Ungraded	.....	32,892	+32,892
Agency contribution for retirement, life insurance, and health benefits	6,319	12,853	+6,534
TOTAL	58,000	126,800	+68,800
Miscellaneous Expenses			
Travel, Bankruptcy Judge and staff	5,000	6,000	+1,000
Library: Initial cost	30,000 NR	30,000 NR	.....
Annual cost (second and succeeding years)	(5,000)	(5,000)	.....
Word processing equipment purchase	10,000 NR	10,000 NR	.....
General office equipment	4,000 NR	6,000 NR	+2,000
Miscellaneous expenses (communications, supplies, etc.)	5,000	7,500	+2,500
TOTAL Initial (first year) cost	54,000	59,500	+5,500
TOTAL Annual recurring cost	15,000	18,500	+3,500
Appropriation: Space and Facilities			
Rental of space	43,000	67,000	+24,000
Tenant alterations and other reimbursable services	8,000	12,000	+4,000
Furniture and furnishings	45,000 NR	65,000 NR	+20,000 NR
Replacement and rehabilitation of furniture and furnishings (recurring)	(5,000)	(7,000)	(+2,000)
TOTAL Initial (first year) cost	96,000	144,000	+48,000
TOTAL Annual recurring cost	56,000	86,000	+30,000
Appropriation: Administrative Office of the United States Courts			
Salaries and expenses of clerical staff (unit cost based on a ratio of one clerical position to every four new judgeships)	.....	7,000	+7,000
GRAND TOTALS:			
Initial (first year) cost	$278,000	411,000	+133,000
Annual recurring cost	$199,000	$312,000	$+113,000

NR Nonrecurring expense

Table 2
ADDITIONAL SYSTEMIC COSTS OF ARTICLE III BANKRUPTCY COURTS UNDER H.R. 3

Unit Cost for Chief Judge:		
Additional law clerk, initial cost*	$43,000	
Additional law clerk, annual recurring cost*	39,000	
Unit Cost for Senior Judge:		
Appropriation: Salaries and Expenses, Bankruptcy Courts		
Judges salaries	69,500	
Agency contribution for retirement, life insurance, and health benefits	4,200	
Law Clerk, Grade JSP-12	29,374	
Secretary, Grade JSP-10	22,307	
Agency contribution for retirement, life insurance, health benefits, and Medicare	5,819	
Travel	12,000	
Miscellaneous expenses (communications, supplies, etc.)	7,500	
Word processors	10,000	NR
General office equipment	5,000	NR
TOTAL Initial (first year) cost	$165,700	
TOTAL Annual recurring cost	$150,700	
Appropriation: Space and Facilities, the Judiciary		
Rental of space	47,000	
Furniture and furnishings	49,000	(NR)
Tenant alterations	12,000	
TOTAL Initial (first year) cost	$108,000	
TOTAL Annual recurring cost	$ 59,000	
GRAND TOTAL (Senior Judges)		
Initial (first year) cost*	$274,000	
Annual recurring cost*	$210,000	
ADDITIONAL COSTS:		
Chief Judges (8 districts with 5 or more judges at $43,000 first year and $39,000 recurring):		
Initial (first year) cost	$344,000	
Annual recurring cost	$312,000	
Senior Judges (20 judges eligible at $274,000 first year and $210,000 recurring):		
Initial (first year) cost	$5,480,000	
Annual recurring cost	$4,200,000	
Clerk of Court position	$64,000	

*Rounded to the nearest thousand.
NR Nonrecurring expense

Table 3
PROJECTED TOTAL COST IMPACT OF H.R. 3
BANKRUPTCY COURT ACT OF 1983

Added Cost of Establishing 227 Bankruptcy Judgeships as Contemplated by H.R. 3 (See Table 1)	First Year	Annual Recurring
- Replacement of Existing Full-Time Bankruptcy Judges:		
Salaries and benefits - 222 @ $3,700..................	$ 821,400	$ 821,400
Judges' staff - 222 @ $68,800..........................	15,273,600	15,273,600
Miscellaneous expenses - 222 @ $5,500 first year and $3,500 recurring....................................	1,221,000	777,000
Space and Facilities - 222 @ $48,000 first year and $30,000 recurring....................................	10,656,000	6,660,000
Administrative Office support costs - 222 @ $7,000....	1,554,000	1,554,000
Subtotal..................................	29,526,000	25,086,000
- Additional Article III Judges - 5 @ $411,000 first year and $312,000 recurring..................................	2,055,000	1,560,000
Total....................................	31,581,000	26,646,000
Chief Judges (See Table 2)		
Chief Judges of courts with 5 or more Judges receive 1 additional law clerk - 8 @ $43,000 first year and $39,000 recurring..	344,000	312,000
Cost of Providing Senior Status for Bankruptcy Judges Comparable to Article III Judges (See Table 3)		
Senior Judges - on April 1, 1983, 40 Judges will be eligible for senior status. Assuming 20 of these are reappointed and shortly afterwards (5 years or less) elect senior status - 20 @ $274,000 first year and $210,000 recurring...	5,480,000	4,200,000
Clerk of Court		
Clerk of court position in Arkansas, Western................	64,000	64,000
Cost Reduction Factor:		
Contract court reporters now provided to bankruptcy judges..	-3,070,000	-3,070,000
Immediate Cost of H.R. 3.................	$34,399,000	$28,152,000

ADDED COST OF ADDITIONAL ARTICLE III JUDGES REQUIRED TO FULLY IMPLEMENT THE BANKRUPTCY REFORM ACT OF 1978

77 Judges (304 - 227) @ $411,000 first year and $312,000 annual recurring..	$31,647,000	$24,024,000
Staff for 12 additional chief judges related to 77 additional judges (chief judges of courts with 5 or more judges receive 1 additional law clerk - 12 @ $43,000 first year and $39,000 recurring...........................	516,000	468,000
Total Added Cost.........................	$32,163,000	$24,492,000
GRAND TOTAL	$66,562,000	$52,644,000

COST TO THE JUDICIARY OF ESTABLISHING A NEW FULL-TIME BANKRUPTCY JUDGE

Appropriation: Salaries and Expenses, Bankruptcy Courts		
Salary of the Bankruptcy Judge	$ 63,600	
Agency contribution for retirement, life insurance, health benefits, and Medicare	6,400	
TOTAL	70,000	
Bankruptcy Judges Staff		
Salaries: Law Clerk, Grade JSP-12	29,374	
Secretary, Grade JSP-10	22,307	
Agency contribution for retirement, life insurance, health benefits, and Medicare	6,319	
TOTAL	58,000	
Miscellaneous Expenses		
Travel, Bankruptcy Judge and staff	5,000	
Library: Initial cost	30,000	NR
Annual cost (second and succeeding years)	(5,000)	
Word processing equipment purchase	10,000	NR
General office equipment	4,000	NR
Miscellaneous expenses (communications, supplies, etc.)	5,000	
TOTAL (initial cost)	54,000	
TOTAL (annual recurring cost)	15,000	
Appropriation: Space and Facilities		
Rental of space	43,000	
Tenant alterations and other reimbursable services	8,000	
Furniture and furnishings	45,000	NR
Replacement and rehabilitation of furniture and furnishings (recurring)	(5,000)	
TOTAL (initial cost)	96,000	
TOTAL (annual recurring cost)	56,000	
GRAND TOTALS:		
Initial (first year) cost	$278,000	
Annual recurring cost	$199,000	

NR Nonrecurring expense

Prepared in: A.O. Budget Branch
Date: January 20, 1983

COST TO THE JUDICIARY OF ESTABLISHING A LAW CLERK POSITION

Appropriation: Salaries and Expenses		
Law Clerk, Grade JSP-12	$ 29,374	
Agency contribution for retirement, life insurance, health benefits, and Medicare	3,310	
Travel	1,000	
Miscellaneous expenses (communications, supplies, etc.)	2,500	
General office equipment	2,000	NR
TOTAL Initial (first year) cost	$ 38,184	
TOTAL Annual recurring cost	$ 36,184	
Appropriation: Space and Facilities		
Rental of space	2,500	
Furniture and furnishings	2,500	(NR)
Replacement and rehabilitation of furniture (recurring)	(250)	
TOTAL Initial (first year) cost	$ 5,000	
TOTAL Annual recurring cost	$ 2,750	
GRAND TOTAL		
Initial (first year) cost	$ 43,184	
Annual recurring cost	$ 38,934	

COST TO THE JUDICIARY OF ESTABLISHING A COURT REPORTER POSITION

Appropriation: Salaries and Expenses		
Court Reporter, Ungraded	32,892	
Agency contribution for retirement, life insurance, and health benefits	3,300	
TOTAL	$ 36,192	
Appropriation: Space and Facilities		
Rental of space	2,500	
Furniture and furnishings	2,500	(NR)
Replacement and rehabilitation of furniture (recurring)	(250)	
TOTAL Initial (first year) cost	$ 5,000	
TOTAL Annual recurring cost	$ 2,750	
GRAND TOTAL (Court Reporter)		
Initial (first year) cost	$ 41,192	
Annual recurring cost	$ 38,942	

COST TO THE JUDICIARY OF ESTABLISHING A NEW DISTRICT JUDGESHIP

Appropriation: Salaries of Judges		
Salary of the Judge	$ 73,100	
Agency contribution for life insurance, health benefits, Medicare, and the Judicial Survivors' Annuities Fund	4,400	
TOTAL	77,500	
Appropriation: Salaries of Supporting Personnel		
Salaries: Law Clerk, Grade JSP-12	29,374	
Law Clerk, Grade JSP-12	29,374	
Secretary, Grade JSP-10	22,307	
Court Reporter, Ungraded	32,892	
Agency contribution for retirement, life insurance, health benefits, and Medicare	12,853	
TOTAL	126,800	
Appropriation: Expenses of Operation and Maintenance of the Courts		
Travel, Judge and staff	12,000	
Library: Initial cost	37,000	NR
Annual cost (second and succeeding years)	(4,000)	
Word processing equipment purchase	10,000	NR
General office equipment	5,000	NR
Miscellaneous expenses (communications, supplies, etc.)	10,000	
TOTAL (initial cost)	74,000	
TOTAL (annual recurring cost)	26,000	
Appropriation: Space and Facilities		
Rental of space	67,000	
Tenant alterations and other reimbursable services	12,000	
Furniture and furnishings	65,000	NR
Replacement and rehabilitation of furniture and furnishings (recurring)	(7,000)	
TOTAL (initial cost)	144,000	
TOTAL (annual recurring cost)	86,000	
Appropriation: Administrative Office of the United States Courts		
Salaries and expenses of clerical staff (unit cost based on a ratio of one clerical position to every four new judgeships)	7,000	
GRAND TOTALS:		
Initial (first year) cost (rounded)	$429,000	
Annual recurring cost (rounded)	$323,000	

NR Nonrecurring expense

Prepared in: A.O. Budget Branch
Date: January 20, 1983

COST TO THE JUDICIARY OF ESTABLISHING A NEW CIRCUIT JUDGESHIP

Appropriation: Salaries of Judges

Salary of the Judge..	$ 77,300
Agency contribution for life insurance, health benefits, Medicare and the Judicial Survivors' Annuities Fund....................................	4,600
TOTAL...	81,900

Appropriation: Salaries of Supporting Personnel

Salaries: Law Clerk, Grade JSP-12....................................	29,374
Law Clerk, Grade JSP-12....................................	29,374
Law Clerk, Grade JSP-12....................................	29,374
Secretary, Grade JSP-10....................................	22,307
Secretary, Grade JSP-9......................................	20,256
Agency contribution for retirement, life insurance, health benefits, and Medicare..	14,815
TOTAL...	145,500

Appropriation: Expenses of Operation and Maintenance of the Courts

Travel, Judge and staff..	10,000
Library: Initial cost..	37,000 NR
Annual cost (second and succeeding years)................	(4,000)
Printing of opinions..	13,000
Word processing equipment purchase...........................	18,000 NR
General office equipment...	8,000 NR
Miscellaneous expenses (communications, supplies, etc.)...........	11,000
TOTAL (initial cost)..	97,000
TOTAL (annual recurring cost)..	38,000

Appropriation: Space and Facilities

Rental of space...	29,000
Tenant alterations and other reimbursable services................	10,000
Furniture and furnishings..	57,000 NR
Replacement and rehabilitation of furniture and furnishings (recurring)...	(6,000)
TOTAL (initial cost)..	96,000
TOTAL (annual recurring cost)..	45,000

Appropriation: Administrative Office of the United States Courts

Salaries and expenses of clerical staff (unit cost based on a ratio of one clerical position to every four new judgeships)....	7,000
GRAND TOTALS:	
Initial (first year) cost (rounded)...............................	$427,000
Annual recurring cost (rounded).................................	$317,000

NR Nonrecurring expense

Prepared in: A.O. Budget Branch
Date: January 20, 1983

COST TO THE JUDICIARY OF ESTABLISHING A NEW FULL-TIME MAGISTRATE

Appropriation: Salaries of Supporting Personnel		
Salary of the Magistrate	$ 63,600	
Salaries: Secretary, Grade JSP-9	20,256	
Clerical Assistant, Grade JSP-7	16,559	
Agency contribution for retirement, life insurance, health benefits, and Medicare	11,385	
TOTAL	111,800	
Appropriation: Expenses of Operation and Maintenance of the Courts		
Travel, Magistrate and staff	2,000	
Library: Initial cost	24,000	NR
Annual cost (second and succeeding years)	(3,000)	
Security investigation	4,000	NR
Word processing equipment purchase	10,000	NR
General office equipment	8,000	NR
Miscellaneous expenses (communications, supplies, etc.)	8,000	
TOTAL (initial cost)	56,000	
TOTAL (annual recurring cost)	13,000	
Appropriation: Space and Facilities		
Rental of space	45,000	
Tenant alterations and other reimbursable services	4,000	
Furniture and furnishings	36,000	NR
Replacement and rehabilitation of furniture and furnishings (recurring)	(4,000)	
TOTAL (initial cost)	85,000	
TOTAL (annual recurring cost)	53,000	
GRAND TOTALS:		
Initial (first year) cost (rounded)	$253,000	
Annual recurring cost (rounded)	$178,000	

NR Nonrecurring expense

Prepared in: A.O. Budget Branch
Date: January 20, 1983

QUESTION NO. 14: I suspect this question will attempt to find out what comes first: the chicken or the egg. Specifically, since the Conference made these recommendations in September of 1982; number one, is the General Services Administration aware of where these additional judges will serve, and if so, does G.S.A. start planning to accommodate the additional judges prior to Congress enacting the legislation? Could you comment generally on how the current system works? I might mention for the benefit of the Members, that after passage of the last omnibus judgeship bill, the subcommittee found that funding for additional court facilities was not provided in the legislation, and the federal buildings fund of GSA was depleted due to funding necessary to accommodate the courts, and as such, normal repair of public buildings was delayed. Obviously, this is a problem for Congress to deal with, not you Gentlemen.

ANSWER: While I am sure GSA is cognizant of the Conference's recommendations and of legislation embodying them, due to the diligence of its legislative liaison unit, I suspect G.S.A. is as ignorant of "where these additional judges will serve" as are we and Members of Congress at the moment. I am, of course, assuming that your question addresses the actual communities in which the new judges will have "resident chambers." Historically that matter has almost always been determined when, or after, the Senate confirms a President's nominee for a position. In general, I believe GSA would rarely be able to anticipate a situs for a "resident chambers" for a district or circuit judge before confirmation.

Most judicial districts have multiple "statutorily designated" locations at which court may be held. See 28 U.S.C. SS 81-131. Although 28 U.S.C. S 462 precludes provision of district court facilities (including chambers) in communities which are not "statutorily designated," newly confirmed district judges usually have a number of "statutorily designated" communities in which they may, with the concurrence of all other judges serving their court, request chambers. See 28 U.S.C. SS 134, 137 and 462. Occasionally Congress has even amended title 28 to add a community so that chambers could be requested at that location, usually as a courtesy to a Member responding to a request from a judge in his district or state. In the past two decades the Conference has consistently opposed most proposals for additional "statutorily designated" communities, even when individual judges have rather aggressively pressed their requests unilaterally with Congress. The Conference has also conscientiously monitored the utilization of facilities and closed those which are not used often enough to warrant our continuing "rental payments" — in several instances in spite of strong arguments against closing by individual judges. I believe our record of space management in that context is excellent. The task has not been easy, and we are rather satisfied with the record we have created.

Half of our twelve regional or circuit courts of appeals also sit in multiple locations. See 28 U.S.C. S 48. Chambers for courts of appeals judges, however, may be requested in any location ". . .where Federal facilities are available when the judicial council of the circuit approves." See 28 U.S.C. S 462(c). Historically many confirmed courts of appeals nominees have chosen to establish "resident chambers" in their home communities. In general we think the practice a beneficial one. The judge is going to have chambers somewhere, and we believe many nominees for courts of appeals positions would lose interest in the positions if they were required by law to reside in a specific community miles from the community in which they are living when nominated. Many courts of appeals nominees have children in secondary school and would turn the position down before moving their families.

In general there are two major reasons why GSA faces a very difficult task in trying to "plan ahead" for new judgeships. First, although the Conference formally files its recommendations in the first month of each Congress, and although in the last decade Congress has eventually created almost every judgeship recommended, the final authorizing legislation has consistently been delayed. The monograph included with my answer to question No. 12 traces the history of the process, and you will note that omnibus judgeship bills have in some instances been delayed six to eight years.

Second, as suggested above, even when GSA knows that a given number of new judgeships will be filled for a specific court, it cannot know who will be confirmed by the Senate or when. Realistically we do not always need to wait for a specific personality to be confirmed. When the 1978 Omnibus Judgeship Act was still in "pending" status, the Administrative Office and GSA made an effort to plan ahead, and we have again done so in anticipation of eventual passage of the currently pending legislation. By letter of April 13, 1983 we requested from each of the circuit councils the proposed or possible headquarters locations of the new district judges, if authorized, to the extent that they could be determined, and the number and types of facilities that would be required at each location, if any. We also requested that the councils notify us of any interim accommodations that will be needed. We have regarded their responses as constituting approval of additional court facilities in accordance with 28 U.S.C. § 462(b).

Based on the information received from the councils (one circuit has not responded as of this date) we hope that a master housing plan can be developed with GSA, which in turn will be able to request that its regions prepare specific construction plans and estimate associated costs. The results, we hope, can be consolidated into one housing package for the omnibus bill. If the ultimate omnibus judgeship bill act is at variance with the Judicial Conference recommendations, the master housing plan could then be adjusted as necessary. On date of passage we anticipate that some of the preliminary planning and cost estimates will be known and that design and construction alterations can then be implemented upon approval of prospectuses and the availability of funds.

In light of the real difficulty we face in identifying headquarters locations for circuit judges, we will proceed with providing them with their needed accommodations when the circuit councils determine where they will be headquartered [28 U.S.C. § 462(c)]. To alleviate many of the problems associated with the housing of circuit judges, we would request a limited leasing authority (see answer to Question No. 6).

QUESTION NO. 15: Mr. Macklin, last week the Administrator of the General Services Administration, Gerald Carmen, testified before the subcommittee that the level of security in buildings provided for in the standard level user charge assessed against departments would be changed, whereby, G.S.A. is planning to utilize increased mechanical systems and have roving guards. How will such a change impact the courts?

ANSWER: We hope that the change will have very little detrimental impact at most of our locations. We are not anticipating widespread problems, because we have fashioned, within the past two years, a new approach to the provision of court security services which we believe will work well. Let me summarize very briefly why we took action and what we have done.

Three years ago we were facing a genuine crisis in the court security area, primarily because incremental changes had resulted in a "chain of command" characterized by confusion. At that point certain aspects of "court security" were generally within the province of U.S. Marshals' offices at the judicial district level (i.e., courtroom security, protection of court personnel, the protection of witnesses and custodial responsibility for criminal defendants); other aspects of "court security" were generally recognized to be the province of either Federal Protective Service guards who were full-time G.S.A. employees or "rental cops" who were "contract" employees retained locally by G.S.A. ("building," "facility," "perimeter," etc. security). We reached the point at which good faith efforts to meet concrete security service requirements at individual situs locations became a "jury rigged" mess — and inevitably there were instances in which all possible providers of service claimed: "that's not our job." The extent to which our judges were complaining eventually brought the problem directly to the Chief Justice's attention, and he took action.

In a series of meetings commencing in May of 1981 between the Chief Justice and the Attorney General, a "task force" approach to defining our problems and fashioning remedies was outlined. The task force filed a complete report including a recommended comprehensive "court security program," and the Judicial Conference approved that report and its recommendations in March of 1982. A copy of the Report is attached. In very summary terms the approach to providing security service is:

(1) The U.S. Marshals Service will provide directly or by contract all "court security" services. In December of 1982 G.S.A. provided the necessary delegation of authority for contracting.

(2) The Administrative Office will directly seek appropriations authorization for the expenditure of funds to pay for those services as part of the Judiciary budget, and will transfer the funds to the U.S. Marshals Service.

(3) Individual facility requirements will be determined by a court security committee in each judicial district, upon which the court, the U.S. Marshal's office, and the U.S. Attorney's office will have representation. Those who have personal knowledge of local conditions will preliminarily determine need, not bureaucrats in Washington.

(4) Because the marshals have the knowledge needed to perform the function well, they will "oversight" services, but the Administrative Office will assist them in that function due to its direct fiscal responsibility to the Appropriations Committees.

In general terms, our objectives are those of drawing clear lines of responsibility and relying upon the expertise of professionals. The people at the judicial district level are most familiar with the facts. The Marshals Service criteria enjoy the confidence of the judges. They will not have to worry about a former convict sentenced in their courtroom appearing as a security guard in their corridors. We will be directly responsible to Congress for related expenditures. If an individual judge requests an unreasonable level of service, his own branch of government will ultimately deny his request by not funding the service. No judge seeking a service will face the "it's not our job" response; he will know that the U.S. Marshal in his district has responsibility.

To date our new approach is generally working very successfully. While we have encountered a few problems concerning who is responsible for space in multi-use buildings (such as garages and parking lots), we believe that in working with the Marshals Service and G.S.A. we can solve those problems.

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS
WASHINGTON, D.C. 20544

WILLIAM E. FOLEY
DIRECTOR

JOSEPH F. SPANIOL, JR.
DEPUTY DIRECTOR

April 20, 1982

MEMORANDUM TO ALL:
UNITED STATES JUDGES
UNITED STATES MAGISTRATES
CIRCUIT EXECUTIVES
DISTRICT COURT EXECUTIVES
CLERKS OF COURT

SUBJECT: Court Security

Attached is a copy of the Report of the Attorney General's Task Force on Court Security and a copy of the Joint Statement by the Chief Justice and the Attorney General before the Judicial Conference in March. The Chief Justice and I urge your full support for this program. I believe it is a constructive approach to a very difficult and important problem. Its success in improving security services to the courts in a time of severe budgetary constraints will depend, in large part, on your consideration.

William E. Foley

Attachments

JOINT STATEMENT OF THE CHIEF JUSTICE AND THE ATTORNEY GENERAL BEFORE THE JUDICIAL CONFERENCE OF THE U.S., MARCH 11, 1982

The provisions of adequate security services to all the participants in the federal judicial system, most especially the Judiciary itself, is a critical element in the relationship between the Department of Justice and the Federal Courts. If we cannot ensure the safety of all participants in the judicial process, we cannot maintain the integrity of the system, we cannot - in sum - "establish justice," as mandated in the preamble to the Constitution of the United States.

This has not been an easy task in recent years, nor will it be a simple matter to accomplish in the future. The Department of Justice, and more specifically, the United States Marshals Service, is the agency vested with responsibility for the provision of court security services. In this time of fiscal austerity, both have been faced with budget reductions, funding uncertainties and reductions-in-force which have made the continued maintenance of security support at the levels sought by the Judiciary very difficult. Further, the fragmentation of responsibility between the United States Marshals (USMS) - responsible for court security - and General Services Administration (GSA) and the Postal Service - responsible for general facility and perimeter security - has made it difficult to orchestrate a concerted response to judicial needs. Finally, the use of contract guards by the General Services Administration - outside the control of the USMS - has only served to exacerbate judicial concern.

At the same time, the needs of the Judiciary as perceived by both the Judiciary and the United States Marshals have risen dramatically. This rise is due to the increase in the number of judges, the increase in the number of cases combined with the increasingly complex and sensitive nature of the cases and the people involved.

If we are to solve this problem, it will only be through mutual understanding of the difficulties we face and agreement - by all participants in the judicial system - to work together in resolving those difficulties. To that end, we have agreed to effect the following actions:

- The United States Marshals Service, in general, and each individual United States Marshal in each district, will assume primary responsibility and authority for the provision of security services to the judiciary, as required. The Judiciary in each district will, therefore, have a single individual to whom it can look for all judicial security matters. To this end, the Attorney General is seeking an appropriate delegation of authority from the Administrator of the General Services Administration.

- In the short-term, the Attorney General, to the extent possible, will seek additional funding for court security including reallocating resources within the United States Marshals Service to return court security resources to the levels existing in FY 1979.

- We have adopted the recommendations of the Attorney General's Task Force on Court Security and will begin their implementation as rapidly as possible. The recommendations provide a reasoned and rational methodology for the provision of the security services in the courtroom, as well as general recommendations for the development of a comprehensive system of court security. These recommendations require the active involvement of all participants in the judicial system during the implementation phase if they are to be successfully utilized. We have, therefore, committed the full and active involvement of our respective organizations in this effort.

- Finally, the Chief Justice will recommend approval of the proposed amendments to Rule 4 (c) and (d) of the Federal Rules of Civil Procedure and encourage the adoption of local rules to relieve the United States Marshals from the responsibility to serve private civil process by the use of alternative methods of serving process. The Attorney General will continue to seek legislation to facilitate the development of such alternative methods, to compensate the government fully for process served, and to reduce the statutory obligation to serve most private civil process. As resources are saved by this action, they may, if appropriate be reallocated to the court security function on the basis of the experience we gain in implementing the recommendations of the Court Security Task Force.

While these actions should not be seen as a panacea, they do represent what we believe to be a useful beginning to the resolution of a critical problem. We seek the continued support of all participants in the judicial system in their implementation.

U.S. Department of Justice
Justice Management Division
Office of the Controller

Management Report

REPORT OF THE
ATTORNEY GENERAL'S TASK FORCE ON COURT SECURITY
March 1982

Prepared by
Evaluation Staff

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INTRODUCTION

This report of the Attorney General's Task Force on Court Security presents policy recommendations for developing a comprehensive security system for the Federal judiciary and provides criteria for determining when and what services the United States Marshals Service (USMS) should provide for the protection of the Federal judiciary.

The Task Force on Court Security was appointed by Attorney General William French Smith in July 1981 and consists of representatives of the Office of the Deputy Attorney General, the USMS, the Federal Bureau of Investigation (FBI) and the Justice Management Division (JMD). Its primary objective was to examine current court security requirements and to develop criteria for determining when a deputy U.S. marshal is needed in the courtroom as a security officer, and to establish policy recommendations for protecting the Federal judiciary and maintaining the integrity of the Federal judicial process.

The Task Force's activities were divided into two phases. The first phase focused on previous studies of court security at the Federal and State level as well as current policies and procedures concerning the provisions of court security. To obtain a basic understanding of many of the security needs and concerns of the Federal judiciary, interviews were conducted with security specialists of the USMS, the JMD, and the Administrative Office of the United States Courts (AOUSC); a behavioral scientist at the FBI Academy concerning threat assessment capabilities; and judicial personnel in Washington, D.C. and Baltimore, Maryland. This phase formed the basis for formulating court security criteria and policy recommendations. The second phase of the study involved a survey of U.S. District court judges in the 95 districts, and each district's U.S. Marshal and U.S. Attorney. These surveys served as a pre-test of the criteria and assisted the Task Force in defining the security needs of the courts.

Issue

During the past decade, increasing incidents of disruption and/or violence in the courtroom have contributed to a growing concern over the adequacy of the security provided to the Federal judiciary. More recently this concern has been intensified by a substantial increase in the number of Federal judges, expanded visibility of many judicial activities through increased media coverage, and a reduction in the resources available to provide court security. One of the basic issues underlying the current concerns regarding court security involves a difference between the Federal judiciary and the Department of Justice as to when a deputy U.S. marshal must be present in court as a security officer.

Study Assumptions

Three fundamental study assumptions were delineated by the Task Force. First, that a systems approach to planning, implementing and reviewing security services for the Federal judiciary is necessary to ensure adequate and comprehensive responses to the changing security needs of a Federal judicial facility. This approach assumes that all key participants are actively involved in court security planning; it also assumes that a total security system must exist for each Federal judicial facility whereby the security needs of courtrooms, judges' chambers, hearing rooms and other judicial areas are addressed in concert with the general security needs of the entire building.

Second, that the principle of risk management is the most appropriate method of determining when and what security services the USMS should provide for the protection of the Federal judiciary. Risk management is the anticipation, recognition and appraisal of a security risk, and the initiation of appropriate action to remove or reduce that security risk. It assumes that various levels of anticipated risk and actual threat environments can be measured and defined. Risk management also provides for resource justification and allocation on the basis of an assessment of the projected or actual need for court security services.

Finally, the Task Force assumed that the presence of a deputy U.S. marshal in the courtroom as a security officer is not necessary at all times. This assumption emanates from the above systems approach and risk management perspective and specifically addresses one of the key concerns over the adequacy of security services for the judiciary, namely, the debate as to what extent deputy U.S. marshals must be present during Federal judicial proceedings.

Purpose of the Report

This report is structured to address the issue of the most appropriate use of court security deputies within the context of a comprehensive system of criteria for determining when and what security measures--that is, a range of security measures including other personnel, equipment, procedures and architectural design--should be provided to protect the Federal judiciary. The report concludes with policy recommendations for developing such a comprehensive court security system within and among the Federal judicial districts.

It is important to note that the Task Force does not intend to suggest or imply any criticism or evaluation of current USMS court security operations. Furthermore, the Task Force recognizes that its policy recommendations and criteria are currently in operation, to some extent, within particular Federal judicial districts and wishes to acknowledge these individual efforts. However, the increasing concern by the Federal judiciary nationwide, as well as current budgetary, legislative, legal and political constraints adversely affecting the delivery of court security services (see Appendix A for further discussion of these constraints) requires a more systematic and comprehensive approach to court security within and among all districts based upon acceptable criteria. This report is designed to institutionalize this approach to court security.

COURT SECURITY CRITERIA

This section presents criteria for developing and implementing a model system of court security for all Federal judicial facilities. Requirements for providing deputy U.S. marshals as court security officers are delineated; indicators identifying anticipated security risk environments and corresponding security measures are presented; and actual threat environments are defined together with security measures and procedures which must be followed when this level of security risk exists. By design, these criteria must be adapted to meet the specific court security needs of each individual district.

A survey by the Task Force indicated that a court security system should be predicated upon various levels of anticipated risk and actual threat environments. Accordingly, the Task Force delineated four levels to address anticipated risks of increasing severity and one level to address actual threats. Anticipated security risk environments should be identified by the U.S. Marshal in concert with the U.S. Attorney and the U.S. District Court Chief Judge.

Use of Court Security Deputies

The Task Force has identified indicators to define various levels of anticipated risk environments and applied these indicators of potential disruption and/or violence to derive the following criteria regarding the presence of a deputy U.S. marshal in the courtroom as a security officer.* The indicators of risk used to determine the level of security required include: stage of the proceeding, type of trial and nature and number of participants. These indicators, and the way in which they are used to identify levels of risk will be discussed immediately after the levels of risk are defined.

Level 1

A deputy U.S. marshal is not required to be present in a Federal courtroom as a court security officer when a level 1 risk environment exists.

A level 1 risk environment exists when the anticipated security risk of a particular civil proceeding is determined to be a low-risk or non-hazardous situation, i.e., there are no indications of potential disruption and/or violence in the courtroom. This level of court security also applies to criminal pre-trial* proceedings when the defendant is not present in the courtroom, provided that there are no indications of a likelihood of disruption and/or violence in the courtroom.

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* It is important to note that the security criteria is designed to govern the use of court security deputies for the protection of the judge, jury and other participants of a Federal judicial proceeding. The criteria does not address the use of deputy U.S. marshals for prisoner transportation purposes whereby, pursuant to USMS policy, defendants in custody are escorted/guarded by two deputies while in transit and while in the courtroom. The Task Force recognizes that these two USMS functions are not always clearly distinguishable either through the allocation of resources by U.S. Marshals (e.g., deputies performing "double duty" of protecting the participants of a judicial proceeding and at the same time guarding the defendant in custody) or as perceived by Federal judges and other recipients of security.

Level 2

A deputy U.S. marshal may be needed to perform as a court security officer in a Federal courtroom when a level 2 risk environment exists.

A level 2 risk environment exists when the anticipated security risk of a particular civil proceeding is determined to be generally non-hazardous yet, at the same time, there are indications of some potential for disruption and/or violence in the courtroom. All criminal trial** and post-trial*** proceedings at which the defendant is present start at this level of anticipated risk environment.

Level 3

One deputy U.S. marshal is required to be present in the courtroom as a court security officer when a level 3 risk environment exists.

A level 3 risk environment exists when the anticipated security risk of a particular criminal trial or criminal post-trial proceeding is determined to present a substantial opportunity for potentially disruptive or violent actions.

Level 4

One deputy U.S. marshal is required, and two or more deputy U.S. marshals may be required to be present in the courtroom as a court security officer when a level 4 risk environment exists.

A level 4 risk environment exists when the anticipated security risk of a particular criminal trial or proceeding is determined to present a high degree for potential disruption and/or violence in and around the courtroom. This determination should be based upon an assessment of indicators which collectively suggest that the proceeding constitutes a high potential for disruption and/or violence in or around the courtroom.

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* Pre-trial: all activities within a judicial proceeding prior to the opening statements; e.g. motions, hearings, and arraignments.

** Trial: all activities within a judicial proceeding beginning with opening statements through closing arguments, e.g., presentation of evidence.

*** Post-trial: all activities within a judicial proceeding following closing arguments; e.g. jury charge, declaration of the verdict, and sentencing.

Model System for Court Security

As noted earlier, the criteria governing when a deputy U.S. marshal is required in the courtroom as a court security officer is just one component of a larger, more comprehensive system for determining when and what security measures need to be taken to respond to various levels of risk environments, both anticipated and actual threat. This section addresses the problem of establishing criteria which adequately respond to the security needs of Federal judicial facilities by establishing an indicator system to identify anticipated levels of risk and providing the framework for districts to develop security criteria to respond to those levels of risk. In addition, this section defines an actual threat environment and outlines security measures which must be taken to respond to that environment.

Identifying Anticipated Security Risk Environments

To determine when a given security level will be in effect, a system for identifying anticipated security risk environments must be developed. This system incorporates factors which indicate the potential for the occurrence of a given risk environment. The system detailed in this section is based upon nationwide responses to surveys on court security. Given the current responsibility of the Department and the USMS, as codified at 28 USC 569(a)--to attend all sessions of court as required by the courts--this system, if implemented, could reduce the number of instances in which a deputy is required to be present during civil trials in U.S. District courts by at least 62%,* provided that other indicators of potential risk do not exist.

The Task Force found that distinct elements of a judicial proceeding, rather than broad generalizations, assist in identifying security needs. In defining the instances requiring specific security measures, the Task Force found that the more case-specific the factor is, the more the factor helped to predict the need for security. Specifically, the following factors, in increasing order of value, are considered most useful in determining the need for security:

- whether the matter is civil or criminal;
- the stage of proceeding, i.e., pre-trial, trial or post-trial;
- the type of civil or criminal case;
- the subject matter of the case, e.g., first amendment rights;
- the number of persons and/or identity of other participants present during the proceeding, e.g., witnesses or spectators; and
- the identity of the parties to the proceeding.

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* Based upon the results of the national surveys identifying low risk types of civil trials (see Table I). This figure is based upon 86% of all types of civil trials completed during the 12 month period from July 1, 1980 to June 30, 1981; the remaining 14% could not be correlated with the categories used in the surveys.

Based upon these distinct factors the Task Force concluded that:

- in general there is a need for security in criminal matters, but not civil matters;
- no one specific stage of a proceeding, e.g., hearings or presentation of evidence, was consistently more critical than the others, but as proceedings progress the later stages dictate an increasing need for security, especially during a jury trial.
- in criminal proceedings, the presence or absence of the defendant during a particular stage is a crucial factor in determining the need for security;
- in civil matters in general, the more basic, visible or personal the affected right or need under litigation, the greater the potential risk of a disturbance;
- in criminal cases, the degree of violence involved in the crime committed is an important factor in determining the potential risk of a disturbance in court; and
- the greater the number of participants the greater the need for security.

These findings establish the need a for review system of civil and criminal trials based on the type of trial and on the nature and number of participants (especially parties) involved in the given proceeding. These indicators can be classified into increasing degrees of risk--low, moderate and high--to indicate an increasing need for security. The results of a national survey suggests the configuration of indicators set forth in Table I, as an appropriate scale to identify the potential for violence.

We must emphasize however, that because each district is unique, each district should refine these listings by adding, deleting or moving particular indicators as past history in the district would dictate. For example, nationally, the surveys indicated that admiralty cases presented a very low possibility of a disturbance; thus, the Task Force classified it as a Low Risk Civil Case. However, a seaboard district may have handled many admiralty cases and found that outbreaks during particular admiralty proceedings occurred frequently. Therefore, that district might move that particular Low Risk Civil Case indicator to the list of Moderate Risk Civil Case indicators.

TABLE I
ANTICIPATED RISK LEVEL INDICATORS

		CIVIL	CRIMINAL
TYPE OF TRIAL	LOW RISK	Admiralty Antitrust Bankruptcy Contracts Economic Stabilization Energy Allocation Environmental Matters Freedom of Information Labor Suits Land Condemnation Personal Injury Product Liability Protected Property Real Property Social Security Tort	Auto Theft Burglary Embezzlement Forgery and Counterfeiting Fraud Larceny/Theft Perjury Public Corruption
	MODERATE RISK	Civil Rights (All) Deportation Foreclosure Forefeiture and Penalty Tax	Assault Extortion Firearms Violations Obstruction of Justice Organized Crime Robbery (All) Sex Offenses Treason
	HIGH RISK		Escape Homicide (All) Kidnapping Narcotics
PARTICIPANTS	LOW RISK	Class Actions	Defendant not Present
	MODERATE RISK	Jury Prisoner Petitions Pro-Se Actions	Defendant not in Custody Defendant's Reputation Multiple Defendants Recidivist Witness with a Grant of Immunity
	HIGH RISK		Defendant with Strong Political or Social Views Escapee Hired Assassin Insanity Plea Organized Crime Figure Protected Witness

The Task Force believes the combination of these factors, i.e., stage of proceeding, type of trial and identity and number of participants, will be useful in determining the need for a specific level of security. In this system the manner in which they should be combined, given equal weights of importance for each indicator, is detailed in Table II.

TABLE II

INDICATOR SYSTEM IDENTIFYING LEVELS OF ANTICIPATED RISK ENVIRONMENT

Docket	Stage of Proceeding	Level of Risk by Type of Trial	Level of Risk by Courtroom Participants	Anticipated Risk Environment
CIVIL	Pre-trial			LEVEL 1
	Trial	Low		
			Moderate	LEVEL 2
		Moderate		
	Post-trial		Low	LEVEL 1
			Moderate	LEVEL 2
CRIMINAL	Pre-trial		Low	LEVEL 1
			Moderate	LEVEL 2
			High	LEVEL 3
	Trial			LEVEL 2
		Low		
			Moderate High	LEVEL 3
		Moderate		
			High	LEVEL 4
		High		
	Post-trial			LEVEL 3
			High	LEVEL 4

To determine the risk environment for a specific situation, and thus the required level of security, the indicators given in Table II should be applied from left to right. For example, the opening statements through the closing arguments (i.e., trial stage of the proceeding) for an admiralty case (i.e., low risk civil trial) tried by a jury (i.e., moderate risk courtroom participants), given no other indications of potential disruption and/or violence in the courtroom, results in a level 2 anticipated risk environment. Therefore, one deputy U.S. marshal may be in court for court security purposes.

The system detailed in Table II provides a uniform framework for determining the need for security by identifying the level of security to be provided in a given circumstance during a judicial proceeding. It is designed to provide flexibility to the districts in responding to the unique needs of their locale, by requiring the districts to refine the indicators contained within the system.

Developing Appropriate Security Responses

Once the existing risk environment has been identified, the appropriate security response to address that environment must be determined. Each level of anticipated risk environment must necessarily have at least one corresponding security response. Thus far, this report has focused upon only one aspect of a total security response--that is, the presence of a court security deputy in the courtroom. What follows is a presentation of how that one aspect should function and be used relative to a system of security responses for a specific Federal judicial facility.

The security response provided will be dependant upon the level of risk environment identified. In general, the systemic security effort must increase as the severity of the anticipated risk environment increases. Increased security efforts may be accomplished by using increased security measures in a given physical area of the facility and/or restricting the physical scope of the area to be secured by given security measures. Thus, two factors must be considered in the development of security responses--physical areas of the facility and combinations of security measures. These factors will form the framework for a system of appropriate security responses. Prior to developing this system however, the coordination of responsibilities for security of general physical areas within a facility must be addressed.

Responsibilities for Security of General Physical Areas. As noted at the beginning of this report, security needs of the courtrooms and other areas of the building occupied by the Federal judiciary cannot be reasonably separated from the security needs of the entire building. Hence, the system of security responses which is developed must cover all physical areas of a Federal judicial facility. To develop such a system will require the cooperation of the General Services Administration (GSA) since security responsibilities within a Federal judicial facility are shared by the USMS and the GSA, and are overlapping. Generally, the former agency is responsible for maintaining security in the judicial areas while the latter is responsible for general building and perimeter security.

In order to ensure that the security responses to various anticipated risks are coordinated, national policy should establish minimum criteria for acceptable building guard services for Federal judicial facilities and should cover miminum standards of personnel selection, performance and evaluation, including a requirement that guards have law enforcement powers of arrest and are qualified and trained to effectively deter, screen and control potential intruders or individuals causing disturbances or violent acts inside or near the facility.

Local guard service contracts should be required to detail the responsiblities of a building guard and the bases for terminating the contract if those responsibilities are not properly performed.

Since such policy development is necessary to the development and implementation of a total security response system, the USMS should be actively involved in defining this policy. Once the coordination of responsiblity is established, security responses can be developed.

Framework for a System of Appropriate Security Responses. The framework for developing a system of appropriate security responses consists of identifying combinations of security measures to be used in various physical locations within the facility at each level of anticipated risk. The system below delineates two combinations of security measures--ordinary and enhanced--and defines four physical areas of the building.

Developing combinations of security measures requires the identification of equipment, non-court security personnel, procedures and architectural design for two types of security.

- Ordinary Security is that combination of security measures to be provided in level 1 and 2 anticipated risk environments in all physical areas of the building, as well as in level 3 anticipated risk environments for Adjacent Areas to the Building and Public Areas of the Building.
- Enhanced Security is that combination of security measures to be provided in level 3 and 4 anticipated risk environments for the Courtrooms and Adjacent Judicial areas, as well as in level 4 anticipated risk environments, for Adjacent Areas to the Building and Public Areas of the Building.

The four physical areas will be defined as follows:

- Adjacent Areas to the Building. This area consists of parking lots, alleyways and other means of access to the building, as well as the roof;
- Public Areas of the Building. This area includes but is not limited to lobby areas, all non-judicial occupant offices, as well as the Clerk of the Court's office, probation offices and U.S. Attorney offices, cafeterias, snack bars, restroom and hallways;

- Adjacent Judicial Areas. This area includes all judicial chambers, reception areas and passageways connecting or providing access to these areas;

- Courtroom Areas. This area should include the courtrooms, jury rooms and witness rooms.

The total security response for an anticipated risk environment is the definition of security types in the various physical areas of the building combined with the criteria for when a deputy U.S. marshal will be present in the courtroom at that anticipated risk level.

As criteria for security measures to respond to a given risk level must necessarily be "building specific", the selection of those measures from the outline provided below should be made by those agencies responsible for providing security. For each of the four physical areas listed, two combinations of security measures must be defined. This can be accomplished by selecting appropriate measures listed below and/or adding measures which past experience or law enforcement training would indicate are necessary. The security measures outlined in the U.S. Court Design Guide, Court Security* ought to be the foundation of appropriate ordinary security responses provided for each of the four physical areas of the building delineated below.

1. Adjacent Areas of the Building.

   a. Ordinary security. This type of security ought to include the following security measures:

      - Uniformed security guards at entrances, and/or patrolling outside the building.

      - Security clearance checks on all janitorial, maintenance and security personnel working in court facilities and the companies providing those services, prior to awarding contracts and prior to those employees working in the building.

      - Implementation of architectural alterations to improve security.

   b. Enhanced Security. This type of security ought to include the following security measures:

      - Additional guards to screen entrants to the building and/or patrol internal and external areas of the building.

      - Use of screening equipment such as magnetometers and x-ray machines to screen all individuals entering the buildings.

      - Clearance and inspection of all deliveries to building occupants.

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* See Appendix B.

2. Public Areas of the Building.

    a. Ordinary Security. This type of security ought to include the following security measures:

        - The existence and proper functioning of preventive, monitoring and alert equipment in these areas, such as: duress alarms, closed circuit television, and/or bullet resistant materials.

        - Personnel to monitor installed equipment provided either through contractual agreements with GSA or other security services or by USMS personnel.

        - Personnel to periodically patrol the building to look for potential security problems and to reduce the possibility of disruption and/or violence in these areas.

    b. Enhanced Security. This type of security ought to include the following security measures:

        - At a minimum, all of the suggested measures under ordinary security.

        - Increased numbers of persons or frequency of the patrols in the building.

3. Adjacent Judicial Areas.

    a. Ordinary Security. This type of security ought to include the security measures prescribed in sections 1a and 2a above.

    b. Enhanced Security. This type of security ought to include the following security measures:

        - Increased patrols through the judicial areas.

        - Additional security guards on the court floor to screen individuals in the area and deter disruptions and/or violence.

        - Magnetometers to screen individuals entering the court floors.

        - X-ray machines to screen packages, briefcases, purses, etc. brought onto the court floors.

        - Visual inspection of all packages, briefcases, pocketbooks, etc., prior to being taken into the judicial areas.

4. Courtrooms.

    a. Ordinary Security. This type of security ought to include the security measures described in sections 1a and 2a above.

b. Enhanced Security. This type of security ought to include the following security measures:

- Screening of all individuals as they enter the courtroom.
- At least one courtroom in each Federal judicial facility that is permanently furnished with special security features and used during high-risk (level 4) and/or actual threat environments surrounding a particular judicial proceeding.
- A pass system for seating of spectators.
- Additional guards around the courtroom.
- Any security measures suggested for ordinary courtroom security that are not used at that level.

Table III illustrates how this system of security responses complements the criteria developed for determining when a deputy will be in court as a court security officer.

TABLE III
COURT SECURITY RESPONSE BY LOCATIONS
AND LEVEL OF ANTICIPATED RISK ENVIRONMENT

		Level 1	Level 2	Level 3	Level 4
Court Rooms	Deputies	No Deputy	One Deputy may be present	One Deputy will be present	One Deputy will be and two or more may be present
	All Other Measures (4)	Ordinary (4a)	Ordinary (4a)	Enhanced (4b)	Enhanced (4b)
Adjacent Judicial Areas	All Measures (3)	Ordinary (3a)	Ordinary (3a)	Enhanced (3b)	Enhanced (3b)
Public Areas	All Measures (2)	Ordinary (2a)	Ordinary (2a)	Ordinary (2b)	Enhanced (2b)
Areas Adjacent to Building	All Measures (1)	Ordinary (1a)	Ordinary (1a)	Ordinary (1b)	Enhanced (1b)

(References in the parentheses are for the discussion of security measures to be considered for various security types discussed above.)

The preceeding sections have focused upon court security criteria for identifying and responding to various levels of anticipated security risk environments. The following discussion departs from the system of indicators for predicting or anticipating security levels and focuses upon that level of security required when an actual threat environment exists. A definition of this security level and security measures to respond to this level of security are presented below.

Defining Actual Threat Environments

Unlike anticipated security risk environments which intrinsically require "predicting" the extent of potential disruption and/or violence that may occur in the courtroom, defining an actual threat-risk environment is principally based upon known evidence or information which constitutes a real threat to the safety of an individual involved in a particular trial or judicial proceeding. Therefore, an actual threat environment exists when a bona fide written or verbal threat has been made which is intended to either cause injury to a Federal judge, a U.S. magistrate or other trial participant; or lessen the integrity of the judicial process in a particular trial or judicial proceeding through intimidation of the threatened party. This level of court security should be considered as presenting the greatest risk regardless of established indicators of potential disruptions and/or violence in the courtroom.

Security Measures for Actual Threat Environments

The most effective approach to minimize criminal opportunities in an actual threat situation is to closely monitor and control the immediate environment of the threatened individual. When a bona fide written or verbal threat has been received by a Federal judge, U.S. magistrate or other trial participant the following security measures and procedures will be considered and used as determined by the U.S. Marshal:

- The U.S. Marshal assign a USMS personal security detail of at least two (2) deputy U.S. marshals after determining that the nature and circumstances of the threat warrant such action;
- The U.S. Marshal immediately notify via telephone and follow-up memorandum the USMS Court Security Division and the nearest Agent-in-Charge of the FBI, concerning the nature and circumstances of the threat, and the security precautions taken. Proper notification of the actual threat situation should also be given to the appropriate Federal, State and local law enforcement agencies;
- The U.S. Marshal utilize the threat assessment capabilities of the Behavioral Science Unit of the FBI Academy, as appropriate;
- The U.S. Marshal ensure that the evidentiary value of any knowledge and/or material (e.g., witnesses of verbal threats or gestures, and threatening letters, messages and telegrams) is maintained and that all other available information concerning the threat is obtained;

The U.S. Marshal continuously evaluate the nature and circumstances of the actual threat and determine the necessity and the extent of using the following security precautions:

- magnetometer placed at the entrance to the courtroom while the threatened individual is participating in a judicial proceeding;
- daily searches (e.g., visual/K-9 bomb sweep) of the parking area, chambers/office, jury room, courtroom and adjacent judicial areas prior to the threatened individual entering such areas;
- seating control of courtroom spectators and members of the press;
- isolating a criminal defendant/prisoner from receiving visitors and/or packages or other materials while in the courtroom with the threatened individual;

The U.S. Marshal will also consider the following additional security precautions to protect the recipient of a bona fide threat:

- limited access/admittance system to the individual's office (e.g., closed circuit television, buzz lock entry control system, controlled package/mail reception area);
- information concerning the individual's medical history, personal physician, emergency hospital facilities and food safety;
- use of a bullet proof vest by the threatened individual;
- route survey of the individual's office-to-home travel pattern assessing vulnerable areas (e.g., overpasses, wooded areas) and identifying alternative routes, etc.;
- home security survey suggesting temporary or permanent precautions such as: perimeter entry alarms, landscaping for security, lighting, garage alarm for auto safety, locking systems, bullet resistant glass, and/or fire alarm systems; and
- enhanced patrol and monitoring of the individual's residence by local police.

S. Marshal must notify the Director, USMS, of an actual threat situation
ovide documentation concerning the nature and circumstances of the
threat.

Conclusions

e Task Force concludes that its initial study assumptions are valid concepts
st be institutionalized into the court security system for the Federal
ry. The Task Force wishes to stress the necessity of a comprehensive and
atic approach to court security within and among the Federal judicial
cts based upon systems approach and risk management principles. More
antly, the application of these principles must be reinforced by a mutual
tanding that deputy U.S. marshals are not needed in the coutroom as court
ty officers at all times. To effectively minimize the current constraints
he court security system these concepts must be accepted and implemented
ly by the Department of Justice, primarily through the USMS, but also by
providers and key recipients of security services for the Federal judiciary.

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POLICY RECOMMENDATIONS

The court security policy recommendations which follow are predicated upon the conclusions of the Task Force and incorporate the court security criteria. The recommendations are separated into two categories: security planning, and security management and coordination. Each recommendation is followed by a discussion which presents additional guidelines to assist in the implementation of the policy statements. In addition, an implementation strategy is provided which delineates a blend of national and district level responsibilities, and estimates timeframes for adopting and executing the policy recommendations.

Security Planning

Recommendation 1

That all U.S. Marshals shall have primary responsibility for conducting uniform, comprehensive court security surveys of all Federal judicial facilities in their district.

Discussion

The court security surveys should be performed by a team of security specialists comprised of a representative of the U.S. Marshal's district office, the respective USMS court security field and/or headquarters inspector (based upon availability), and a representative of the principal provider of building security for a particular Federal judicial facility (e.g., GSA, and/or contract security agency). The survey team should actively seek input from members of the Federal judiciary (e.g., judges, magistrates, clerks of the court) and other building occupants (e.g., U.S. Attorneys) regarding their perceptions of court security needs and measures.

The USMS should adopt and utilize a single court security survey form suitable for use at all Federal judicial facilities. This uniform survey should be designed to collect, at a minimum, information regarding: building design and characteristics; number and composition of building occupants; nature and extent of judicial workload; inventory of security resources and utilization delineated by agency responsibility; security resource requirements; and all vulnerable areas of the building and alternative security measures.

The security survey should include the courtrooms, public and non-public areas within the judicial environs, and other public areas within and outside the building housing court facilities. Survey results should be accompanied by building floorplans, photographs and other support documents (e.g., contracts for security services and maintenance).

Recommendation 2

That all U.S. Marshals shall develop a written security plan for each Federal judicial facility in their district based upon the results of the respective security survey.

Discussion

The written security plan should include specific detailed instructions and procedures for meeting court security needs during various levels of anticipated risk and actual threat environments. The plan, at a minimum, should provide:

- a delineation of the entire court security system including:
  - appraisal of risk environments;
  - identification of appropriate security responses to a given risk environment utilizing measures set forth in the U.S. Court Design Guide; and
  - listing indicators of anticipated risks of disturbance and/or violence;
- the mechanisms for applying the security system including:
  - the composition and responsibilities of a court security committee;
  - reviews of court calendars and dockets to identify potential security risks;
  - establishment of planning procedures for projecting court security requirements; and
- special procedures to determine the temporary security requirements for short-term judicial events (conferences or meetings) or actual threat environments.

The plan should prioritize security responses for various levels of anticipated risk environments and propose alternative solutions to resolve the security problem. Procedures for actual threat environments should specify those members of the Federal judiciary who are eligible for personal security services by the U.S. Marshal.

Each security plan should be consistent with the Facility Self-Protection Plan for the Federal judicial facility by ensuring that security measures are properly balanced against the fire and safety requirements of the facility. Furthermore, the plan should attempt to balance the public's right of access to the Federal judicial facility as a public building against the need to protect all participants involved in the Federal judicial process and to maintain the integrity of that process. Finally, the distribution of the plan should be strictly controlled by the U.S. Marshal on a "need to know" basis; at a minimum, copies of the plan should be maintained at the U.S. Marshal's district office and suboffice locations respectively, and should be provided to the court security committee members (e.g., the District Court Chief Judge and the U.S. Attorney), the respective USMS court security field inspector and the Chief of the USMS Court Security Division.

Recommendation 3

That all U.S. Marshals shall establish and be the principal coordinator of at least one court security committee to advise on the planning, implementation and continuous review of the court security system for each Federal judicial facility in their district.

Discussion

The district court security committee should consist of the following key participants or their designees: the U.S. Marshal, the U.S. District Court Chief Judge, the U.S. Attorney, the Clerk of the Court and a representative of the principal provider of building security for specific Federal judicial facilities. Committee meetings should be scheduled on a regular basis as determined by the U.S. Marshal.

Specific goals and objectives of the court security system within the district should be clearly defined by the committee. An implementation schedule for completion of all surveys and plans should be decided by the committee prioritizing the Federal judicial facilities in the district. The responsibilities of the committee should continue throughout and beyond the completion of all written security plans and should be institutionalized as an integral component of the court security system within the district.

Recommendation 4

That all U.S. Marshals shall establish procedures for short-term planning of the court security requirements for specific judicial proceedings based upon the model system of indicators developed by the Task Force.

Discussion

Court calendar/docket reviews should be conducted at a minimum by representatives of the U.S. Marshal, the U.S. Attorney and the Federal judiciary located within individual Federal judicial facilities in order to assess the appropriate level of anticipated risk environment. It shall be the responsibility of the U.S. Marshal to plan corresponding security measures for specific judicial proceedings based upon the assessed level of risk environment.

Short-term planning procedures should be predicated upon established indicators of anticipated risk that are consistent with the spirit and intent of the model system of indicators developed by the Task Force. The security criteria governing the need for court security deputies must be incorporated into the short-term planning activities and the written security plan.

Recommendation 5

That all U.S. Marshals shall establish procedures to determine, plan and provide temporary security measures for special judicial events and/or actual threat environments.

Discussion

Security procedures for temporary judicial events should include a special survey of the facilities to be used for judicial conferences, circuit meetings or other special events involving a substantial number of the Federal judiciary. The special event security planning at a minimum should take into consideration the nature of the special event relative to its potential to involve security problems, judicial perceptions of security needs for the special event, input and requested cooperation from the security managers of the building hosting the special event, and the availability of supplemental security resources (e.g., equipment and personnel) outside the U.S. Marshal's district office.

Security procedures for assessing and responding to an actual threat environment must be consistent with the security criteria delineated by the Task Force. At a minimum U.S. District Court judges, U.S. Circuit Court judges, U.S. magistrates and U.S. Attorneys and their Assistants must receive personal security services if determined by the U.S. Marshal that an actual threat environment exists.

Bankruptcy judges, clerks of the court, jurors and witnesses (not participating in the USMS Witness Security Program) also should be considered as eligible recipients of personal security services on a case-by-case basis, if determined by the U.S. Marshal that an actual threat environment exists.

Recommendation 6

That all U.S. Marshals shall establish and maintain routine communications among the Federal judiciary and those agencies responsible for providing security for each Federal judicial facility in the district.

Discussion

As the principal planner and coordinator of security services for the Federal judicial district, the U.S Marshal should attempt to create and maintain mutual understanding between the providers and recipients of court security services as to when and what security measures are necessary for individual Federal judicial facilities and, more specifically, particular judicial proceedings. The scope of this routine communicative channel should extend beyond ordinary or special court security problems; it should be used to heighten the level of security awareness by all occupants of a Federal judicial facilities through information dissemination (e.g., bulletins, newsletters, etc.) and/or educational means (e.g., training programs for judges addressing actual threat environment or hostage situations).

Recommendation 7

That all U.S. Marshals shall establish and maintain liaison with Federal, State and local criminal justice agencies.

Discussion

The U.S. Marshal should contact law enforcement agencies within the district to determine the availability and extent of any local assistance--personnel, equipment and/or relevant information--which may be supplied in high-risk environment or special event circumstances.

Security Management and Coordination

Recommendation 8

That the USMS shall establish and promulgate written policies and guidelines to assist in the management and coordination of a comprehensive court security program.

Discussion

Written policy initiatives should be consistent with the criteria presented within this report and should cover all aspects of court security planning, management and coordination.

Two general security policy statements should be specifically adopted by the USMS:

- that the level of building security be based upon the identified level of risk environment and not the level of security currently provided in comparable commercial buildings for non-judicial normal risk occupants; and
- that the role of a court security deputy be strictly limited to those activities which directly protect the safety of the judiciary, the parties and the participants involved in a particular judicial proceeding, and/or maintain the integrity of the judicial process.

Recommendation 9

That the USMS shall establish and maintain a national data base to consist of all relevant and necessary information to manage the Court Security Program.

Discussion

The national data base should be based upon completed security surveys and established security plans for all Federal judicial facilities. Information concerning the nature and extent of short-term planning should also be collected. At a minimum the information collected should include: numbers of actual threats on all members of the Federal judiciary and U.S. Attorneys and their Assistants; numbers of disturbances in various courtroom situations; indicators of anticipated risk situations in existence during such disturbances; and resources used to provide necessary levels of court security.

The analysis of statistical information should consist of comparison and categorization of relevant commonalites among Federal judicial facilities, and an assessment of resource requirements and the need for reallocation of resources. This data base should become a critical element in budget justification for the USMS Court Security Program.

An incident reporting system should be established for the U.S. Marshals and used to assist in the collection of national data base statistical information, to review security plans, and to assess security measures taken to respond to anticipated risk and actual threat situations. Incident reports for disturbances during anticipated risk situations should identify causes of the disturbance, actions taken to dissipate the disturbance, and resources required to dispel the disturbance. Incident reports for actual threats should be established and maintained on each threat, incidents related to the threats, and resources expended in responding to the threat.

Recommendation 10

That the U.S. Marshal and the USMS shall perform periodic inspections at all Federal judicial facilities.

Discussion

Inspections, scheduled and unscheduled, should be performed on a recurring basis. Inspections should review all security areas covered by the security plan; at a minimum this should consist of a visual inspection of the building and premises, review of guard duty assignments and performance of assigned functions, and equipment testing.

Recommendation 11

That the U.S. Marshal shall perform periodic reviews of operating security plans.

Discussion

The U.S. Marshal should make periodic, partial and/or full reviews of operating security plans for facilities in the district in order to ensure the reliability of such plans.

Frequency of reviews should be determined by the U.S. Marshal, either as change in the environment requires or after a reasonable period of time. Changes in the environment sufficient to require a review of the security plan should include: changes in contracts for security guards or for maintenance of security equipment, changes in the building occupants, increases or decreases in the number of Federal judges/magistrates, increases or decreases in the district's judicial workload, changes in the locations or amounts of security equipment, and policy or budget changes which affect USMS or building security resources available for court security.

Recommendation 12

That the USMS shall establish and maintain training programs designed to heighten awareness of security risks and appropriate security responses.

Discussion

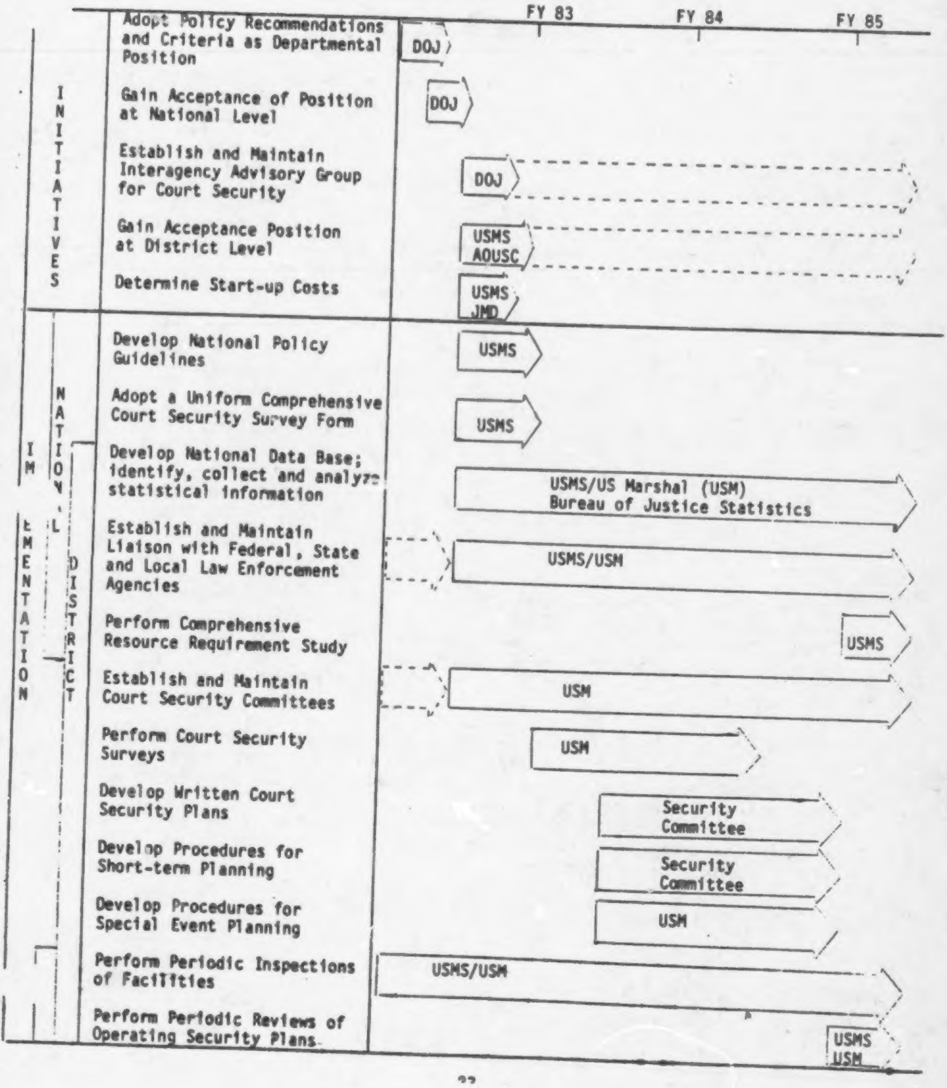
The USMS should establish short-term, self-help security courses which inform those involved in the Federal judicial system of measures that can be taken to better protect themselves (e.g., parking personal car in a well lighted area) and minimize opportunities of becoming a crime victim. This course should be available at a minimum for all Federal judges, U.S. magistrates, and U.S. Attorneys and their Assistants.

USMS Court Security Inspectors should receive specialized training in the area of threat assessment (e.g., threat analysis through a psycholinguistic approach) so that they can convey this knowledge to all USMS personnel in their respective districts.

Implementation Strategy

An implementation strategy and timeframe to implement the above policy recommendations for court security is set forth in Table IV. Responsible agencies within and outside the Department are designated for each initiative.

TABLE IV
IMPLEMENTATION STRATEGY



INITIATIVES		Adopt Policy Recommendations and Criteria as Departmental Position	DOJ
		Gain Acceptance of Position at National Level	DOJ
		Establish and Maintain Interagency Advisory Group for Court Security	DOJ
		Gain Acceptance Position at District Level	USMS AOUSC
		Determine Start-up Costs	USMS JMD
IMPLEMENTATION	NATIONAL	Develop National Policy Guidelines	USMS
		Adopt a Uniform Comprehensive Court Security Survey Form	USMS
		Develop National Data Base; identify, collect and analyze statistical information	USMS/US Marshal (USM) Bureau of Justice Statistics
	DISTRICT	Establish and Maintain Liaison with Federal, State and Local Law Enforcement Agencies	USMS/USM
		Perform Comprehensive Resource Requirement Study	USMS
		Establish and Maintain Court Security Committees	USM
		Perform Court Security Surveys	USM
		Develop Written Court Security Plans	Security Committee
		Develop Procedures for Short-term Planning	Security Committee
		Develop Procedures for Special Event Planning	USM
		Perform Periodic Inspections of Facilities	USMS/USM
		Perform Periodic Reviews of Operating Security Plans	USMS USM

APPENDIX A

CONSTRAINTS AFFECTING COURT SECURITY

Implemention of the court security criteria and policy recommendations developed by the Task Force will, in large part, be affected by the following budgetary, legislative, legal and political constraints.

- All three executive agencies having responsiblities for providing security services for the Federal judiciary are currently experiencing reductions in resources. Although the court security criteria and policy recommendations were developed without specific reference to the extent of current or future resources, the question of adequate level of resources for a comprehensive court security system will need to be addressed.

- The division of court security responsibilities among three separate executive branch agencies and the judiciary has been, and continues to be, a factor as to when, what and by whom services are provided to the judiciary. Policy changes and/or budgetary reductions by one or more of these agencies affect the total delivery of security services for the Federal judiciary. In light of the assumption that court security must include building security, courtroom security and personal security, it is necessary that a determination be made as to the appropriateness of several agencies providing security services for the Federal judiciary and how the delivery of security services can be better coordinated and controlled.

- The court security criteria and policy recommendations are designed to ensure a mutual understanding among the providers and principal recipients as to the types of security measures needed for various levels of anticipated risks. The current practice of the Federal judiciary to place security requirements upon the U.S. Marshals through the issuance of court orders could have an adverse impact upon implementing a standard court security system.

- There has been little uniform acceptance of past security requirements and responsibilities by the various judicial districts, and between the districts and the administrative agencies responsible for providing security. Prior to implementing the court security criteria and policy recommendations, a satisfactory level of acceptance among all court security participants must be ensured if a comprehensive security system is to be achieved.

APPENDIX B

U.S. COURT DESIGN GUIDE*

Court Security Section

May 1, 1979

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* This guide was developed jointly by AOUSC and GSA. According to AOUSC, it is currently being updated.

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1. Courtroom (circuit and district).

a. Ballistic material. The judges' bench shall be protected on vertical sides having public exposure by ballistic material which will withstand penetration by off the shelf bullets fired from hand guns up to and including a .357 magnum. The material should be installed on the interior of the bench and covered with material compatible with existing decor.

b. Alarm devices. A duress alarm device shall be installed on the judges bench and on the court clerk's desk, within easy reach. The duress switch shall be designed for hand activation, either button or lever switches may be used, but the devices shall be of the squeeze type which require that two slides be squeezed simultaneously to activate an alarm or a sliding type which requires a finger to be placed into a recess to engage the slide and push or pull to activate. When activated it should remain in the "alarm" position until reset. Duress alarm devices will be provided with line supervision. Monitor panels shall meet class "B" requirements. Class "B" monitor panels shall offer high resistance to attempted circumvention of this system. Line current shall not exceed 30 milliamperes. An alarm shall be initiated if the normal line current fluctuates beyond the following limits:

(1) Ten percent of the direct current, or ten percent of the direct current with 100 cycles or less superimposed.

(2) Fifteen percent of the direct current with 100 cycles or more superimposed.

The panel shall provide visual and audible signals for alarm conditions. Monitor panels shall terminate in the U.S. marshal's office and at a building security force monitoring point.

c. Emergency lighting. Emergency battery lighting shall be installed to provide sufficient illumination in the courtroom to discern movement and aid in the evacuation in the event of a power failure. Refer to requirements of Life Safety Code, NFPA 101.

Emergency lighting should not be directed on the judges' bench or the judges' exit. All battery operated units will utilize sealed batteries with a minimum five (5) year life expectancy to be covered by warranty. When feasible, emergency lighting should be incorporated into the courtroom lighting system. When a separate emergency lighting system must be installed it should be in accord with the interior design of the courtroom.

d. Light switches. Courtroom light switches shall be installed in a secured location not accessible to the general public. If in existing buildings, courtroom light switches are accessible to the public, they should be converted to key operation to prevent access by unauthorized persons.

2. Judges' chambers (circuit and district).

a. Alarm devices. Install a duress alarm device on the judge's desk and on the secretary's desk, within easy reach. This device and circuit shall be of the same type as the courtroom's and terminate at the same locations.

b. Visitor control. When deemed necessary by the AO, a visitor control system should be installed at the main entrance to the judge's chambers from the public corridor. This will consist of an electro-mechanical lock on the main entrance door with a control release located on the secretary's desk within easy reach. This door should be fitted with a reliable key-operated lock, which will be used to open the door for early or after hours entry. All locking devices used will meet GSA life safety criteria. Provisions will be made for emergency egress.

All door-control components shall be flush mounted and operate on low voltage power. Instruction plates shall be included in the system and designed to meet GSA building sign criteria. An intercom station shall be located at or near the door and equipped with a button or other signaling device to alert the secretary of a visitor. The secretary can activate the intercom system to communicate with the visitor.

When recommended by the AO, a closed circuit television camera (CCTV) should be mounted outside the chambers' entrance and be postioned for visitor identification. Conduit for an additional camera for surveillance of the corridor adjacent to the chambers' entrance will be provided if the project directive so indicates.

The CCTV camera shall be connected to a TV monitor at the secretary's desk for visitor identification and entry control into the chambers. The CCTV monitor will have loop-through capabilities. Swithces controlling the power to the CCTV cameras shall be provided and will be located in the vicinity of the secretary's monitoring point.

In facilities with a private corridor to serve multiple-judges' chambers, the above visitor control system should be used. The system will have to be modified to the extent that each judges's secretary will have a TV monitor, intercom, door control release, and associated controls. Only one CCTV camera will be required at a selected entrance to the private corridor. When deemed necessary by AO an additional camera may be installed to permit observation of the immediate area; project specifications should be followed. The intercom shall be a multi-station type where all chambers are listed. When a visitor wishes to see a given judge, the visitor will either dial a specific number, or push a given button to signal the office to be visited. If other doors lead to the private corridor from the public areas, they should be locked from the outside, but equipped for emergency egress.

The visitor control system shall be installed at a centrally located entrance designated by the AO.

c. Emergency lighting. One emergency battery lighting unit shall be installed at a strategic location to provide sufficient illumination in the chambers to discern movement and aid in the evacuation in the event of a power failure.

All battery-operated units will utilize sealed batteries with a minimum five (5) year life expectancy to be covered by warranty. When feasible, emergency lighting should be incorporated into the lighting system of the chambers. When a separate emergency lighting system must be installed, it should be in accord with the interior design of the chambers.

3. Judges' elevators.

a. New buildings. In new construction projects involving multiple-judge courts one or more elevators shall be provided for the exclusive use by the judges. In one-judge courts arrangements should be made to key one public elevator to permit "on demand" private use by a judge.

Judges' elevators should be located to permit a judge to enter the building and proceed to the chambers without any public contact. These elevators shall be equipped with an emergency telephone, wired to the U.S. marshal's office and/or the building security force monitoring point.

b. Existing buildings. When an existing building containing a multiple-judge court is remodeled a private elevator (if none exist) should be installed for the judges' use, if feasible. If this is not feasible and one of the public elevators cannot be assigned for the exclusive use by the judges, one of the public elevators should be keyed to permit "on demand" private use by a judge.

4. Judges' parking. In buildings where there is in-house parking, the spaces assigned to judges should be near the elevator used by them. The parking spaces should not be identified as judges' parking. "Reserved" signs and numbers should be used. Signs used for this purpose shall meet building sign criteria.

Where no in-house parking facilities are available, parking spaces identified as above should be assigned in a parking lot as near as possible to the building entrance. When deemed necessary by the AO a CCTV camera(s) should be installed to provide continuous surveillance of the judges' parking area. CCTV cameras with associated controls exposed to the elements shall be housed in tamper-proof environmental housing. The monitoring of the camera will be at the building security force monitoring point.

5. Building entrance (judges'). One entrance to the building should be selected by the AO for entry by the judges for after hours and weekends. Entry should be controlled by issuing a key or key-type device (key-card) which will open the selected door. This could be the same key device used to operate the judges' elevator. The use of this system will be determined by the AO.

5. Clerk of court (circuit and district).

a. Alarm devices. Duress alarm devices terminating at a monitoring panel in the U.S. marshal's office and at the building security force monitoring point shall be installed at the following stations:

- Court clerk's desk in his office;

- Counter in the general office. (one or more devices may be required);

- Cashier's station. This device is to be on a separate circuit from the other duress devices in the clerk's suite.

All devices and circuits, as well as monitor panels will meet the criteria as outlined in Courtroom, par. 1b, for devices, circuits and monitor panels.

b. Vault protection. the court clerk's vault shall be protected by the use of magnetic door contacts and a heat detector.

Simple magnetic switches when properly installed with the switch assembly mounted on the fixed portion of the item being protected (door), and the magnet mounted on the movable portion, the magnet shall hold the switch contacts in the closed position when the protected item (door) is closed, but shall allow the switch contacts to open and cross when the latching or lead edge of the closure is moved two inches or less. The magnet shall be mounted in an unsupervised housing of plastic or other nonferrous material providing reasonable protection against the environment.

Heat detectors shall be of automatic reset type and include both fixed temperture and rate-of-rise features. Heat detectors should initiate an alarm signal when the ambient temperature exceeds 135 degrees F., the rate-of-rise of temperature exceeds 5 degrees F., in 20 seconds. Heat detectors should be installed inside the vault above the door for optimum sensitivity to temperature changes.

These devices will terminate at a monitoring panel in the U.S. marshal's office and at a building security force monitoring point. If a proprietary monitor point is not available, alarm signals should be transmitted to the nearest manned Federal Protective Service monitoring point. All devices and circuits, as well as monitor panels, will meet the criteria as outlined in Courtroom par. 1b, for devices, circuits and monitor panels.

7. Magistrate.

a. Courtroom. The magistrate's bench in the courtroom shall be protected on vertical sides having public exposure by ballistic material that will withstand penetration by off the shelf bullets fired from hand guns to and including a .357 magnum. The material shall be installed on the interior of the bench and covered with material compatible with the finish of the bench.

A duress alarm device shall be provided at the magistrate's bench.

b. Office suite. A duress alarm device shall be provided at the magistrate's desk and at the secretary's desk in the magistrate's office. The above devices will terminate at a monitoring panel in the U.S. marshal's office and, when available, at a building security force monitoring point. All devices and circuits, as well as monitor panels, will meet the criteria as outlined in Courtroom, par. 1b, for devices, circuits and monitor panels.

A peephole shall be installed in the magistrate's door to the courtroom. It should enable the magistrate to see whether the room is ready for court and disruption free.

8. Garage entry control.

a. Garage door controls. One garage entrance shall be selected for after hours entry. This entrance shall be equipped with electro-mechanically operated overhead metal door(s). (Overhead metal door shall meet General Services Administration safety criteria). Overhead doors will be provided with an inside remote control door release and operating controls. Two (2) sets of controls will be provided. One (1) set of controls will be located inside the building within view of the operating door. The other set of controls will be remotely located at a building security force monitoring point.

b. Communications. An intercom station shall be located at or near the garage entrance to provide two-way communications with the building security force monitoring point. A button or other signaling device shall be provided to alert the monitoring point.

c. Key-card entry. A key-card type station shall be installed at or near the garage entrance door. There shall be one (1) key-card station at a distance consistent with safe traffic flow and manufacturers specifications for the interior and exterior of the garage entrance. The key-card stations shall be connected to the overhead door controls, by appropriate interface equipment to allow automatic control of door when authorized card is inserted in the card reader.

d. Entry surveillance. A closed circuit television camera (CCTV) shall be monitored outside the garage entrance. The camera shall be installed in such a manner as to provide a clear and unobstructed view of the vehicle and driver. CCTV cameras with associated controls exposed to the elements, shall be housed in tamper-proof environmental housing. Monitoring of the CCTV camera shall be accomplished at the building security force monitoring point.

QUESTION NO. 16: Mr. Macklin, in view of the fact G.S.A. plans to charge the courts if they want an actual guard in a courthouse, has the Administrative Office of the Courts made a request of the Office of Management and Budget and the Appropriations Committees for additional funding to pay for guard services?

ANSWER: I believe my answer to the preceding question (No. 15) explains why the answer to this question is "no." We intend to reimburse the U.S. Marshals Service for services. That entity will in turn make any necessary adjustments with GSA. Our budget requests for reimbursement of the Marshals Service will be processed in the same fashion as are all of our other budget requests.

QUESTION NO.17: Mr. Macklin, recently this committee reluctantly approved a lease necessary to accommodate the courts in Santa Ana, California. How long had the request for housing been outstanding, since this subcommittee was very desirous of constructing a facility to accommodate the courts?

ANSWER: Following enactment of Public Law No. 96-462 on October 15, 1980, which (in section 2) authorized Santa Ana as a statutorily designated place of holding court as of October 1, 1981, the District Court for the Central District of California worked with the Administrative Office to finalize specifications for requesting facility space from G.S.A. On May 13, 1981, on behalf of the court, the Administrative Office formally requested 21,000 square feet of space in Santa Ana.

To our knowledge a lease prospectus, although submitted to your subcommittee, was not finally approved, but was withdrawn. Nevertheless in January of 1982 GSA commenced review and approval of a proposed "Solicitation for Offers" for leased space in Santa Ana. Agreement was reached on the solicitation on July 13, 1982.

Subsequently the offer which GSA found acceptable proved unacceptable to the district court, due primarily to problems associated with providing adequate security arrangements. The GSA-selected facility contained a significant ground floor retail merchandising arrangement which, in the court's opinion, would have presented substantial difficulties in providing adequate security protection for the court and members of the public. In June of 1983 GSA and the court agreed to a new "Solicitation for Offers" which would adequately recognize security requirements. Agreement has been reached upon the new solicitation, a market survey was conducted on December 21, the Solicitation for Offers will be distributed during the week of December 26, and GSA anticipates an award by March 1, 1984.

QUESTION NO. 18: Mr. Weller, I am advised that many years ago this Committee authorized construction of a new courthouse in Hato Rey, Puerto Rico. However, upon completion of the building the judges refused to move in for numerous reasons. Apparently, this committee became very involved and actually had the judges from Puerto Rico come and testify before the subcommittee and an agreement was reached whereby the district courts are now located at Hato Rey and the bankruptcy court was to be located at the facility being vacated by the district court. What is the current status regarding the housing of the judges?

ANSWER: Current housing arrangements for judges and supporting elements of the United States District Court in Puerto Rico involve three different buildings: the "old" United States Post Office and Courthouse in San Juan; the Federal Building in Hato Rey; and the "new" United States Courthouse in Hato Rey. Seven district court judges, three magistrates and the district court clerk's offices are now "housed" in the "old" courthouse in San Juan. The United States Probation Office is now located in the Federal Building in Hato Rey. The bankruptcy court is now located in the "new" courthouse in Hato Rey.

In accordance with the agreement referenced in your question four specific changes in "housing" arrangements were to have been undertaken:

(1) All of the district court judges were to relocate in the "new" courthouse in Hato Rey;

(2) The magistrates and district court clerk's office were to relocate in the Federal Building in Hato Rey (and the court library was to be housed in that facility);

(3) The probation office, while remaining in the Federal Building in Hato Rey, was to occupy expanded space in that facility; and

(4) The bankruptcy court was to relocate in the "old" courthouse in San Juan.

Since that agreement was fashioned, revisions have been proposed in only one of the four elements in the agreement. In a letter, dated September 8, 1983, the Acting Director of the Real Estate Division of the Public Buildings and Real Property Service office of Region II for G.S.A. notified the Administrative Office that: ". . .the proposal for the bankruptcy court's move into the old San Juan courthouse would have necessitated a move into leased space until the required alterations in the courthouse were accomplished. In addition due to the substantial costs of needed renovations in old San Juan and anticipated release of space in the Hato Rey Federal Building through the nationwide policy of space reduction, we recommend that the (U.S.) bankruptcy court permanently relocate to the Hato Rey Federal Building." The Administrative Office has been advised by the district judge responsible for overseeing relocation progress, that the judges presently serving the district court, and the judges presently serving the bankruptcy court, do not object to that proposed revision in the agreement.

QUESTION NO. 19: Mr. Weller, recently Congressman Lyle Williams from Youngstown, Ohio, contacted the subcommittee regarding a proposal by G.S.A. to terminate plans for construction of a federal building and courthouse in Youngstown, Ohio. Apparently, G.S.A. stated the facility was not needed based on diminished space needs of the courts. Could you elaborate on this?

ANSWER: On July 7, 1983 the Administrative Office reaffirmed its original request to G.S.A. of the precise square footage needed by the district court in Youngstown, Ohio — 9,870 square feet. See enclosed letter to Mr. J. David Hood and attachment. That figure of approximately 10,000 square feet is identical to our request of February 17, 1981. See enclosed letter to Mr. Ed Babbitt, dated May 21, 1982. That figure remains valid now.

To our knowledge the space needs of the court in Youngstown have not become "diminished" at all since our request of G.S.A. During consideration of a Youngstown prospectus in April and May of 1982, I testified before the subcommittee that the courts could not justify a need for 16,500 square feet submitted by G.S.A.in its original filed document, and that we had an obligation to state on the record our recommendation that more than 10,000 square feet not be approved by Congress.

At the moment there exists a vacancy in a bankruptcy judgeship which has traditionally served Youngstown. The work to be done did not evaporate when the last incumbent in the position vacated it. Others are doing that work until a new incumbent is appointed. The facilities are still needed. The Administrative Office has no reason at all to conclude that space needs as reaffirmed in our attached July 7, 1983 letter have diminished.

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS
WASHINGTON, D.C. 20544

WILLIAM E. FOLEY
DIRECTOR

SEPH F. SPANIOL, JR
DEPUTY DIRECTOR

ROBERT H. HARTZELL
CHIEF, ADMINISTRATIVE
SERVICES DIVISION

July 7, 1983

Mr. J. David Hood
Chief, Planning Staff
General Services Administration
230 South Dearborn Street
Chicago, Illinois 60604

Dear Mr. Hood:

In response to your March 21 correspondence regarding the re-evaluation of space requirements for the U.S. Courts in Youngstown, Ohio, we forwarded the matter to the Sixth Circuit Judicial Council for review.

We have now received notification of their action. A listing of space requirements is enclosed to be used in planning space for the Courts. The Court has no objection if these requirements are satisfied in a new Federal structure that would be constructed.

We hope this information will assist you in your planning effort.

Sincerely,

Louis J. Komondy
Chief, Space and Facilities Branch

Enclosure

cc: Honorable George Clifton Edwards, Jr.
Mr. James Higgins
Mr. James Macklin
Mr. William Weller

SPACE REQUIREMENTS
UNITED STATES COURTS
YOUNGSTOWN, OHIO
MARCH 24, 1983

District Court		
Courtroom	1,120 sq. ft.	
Non-resident Judge's Chambers (Judge's Office with Private Toilet, Secretary/Reception, Law Clerk)	750 sq. ft.	
Adjunct Facilities (Jury Room, Witness Room, Attorney Conference Room, and Court Reporters Room)	1,300 sq. ft.	
District Court Clerical		
General Office (2) (Including Public Area)	400 sq. ft.	
Vault	100 sq. ft.	
Storage	100 sq. ft.	
Machine/Supply/File	250 sq. ft.	
		4,020 sq. ft.
Probation		
Probation Officers 2 @ 150 sq. ft. ea.	300 sq. ft.	
Secretary/Reception	200 sq. ft.	500 sq. ft.
Bankruptcy Court		
Courtroom	1,120 sq. ft.	
First Meeting Room	500 sq. ft.	
Courtroom Storage Closet	100 sq. ft.	
Witness Room 2 @ 200 sq. ft. each	400 sq. ft.	
Attorney Conference/Jury Deliberation including toilet	250 sq. ft.	
Judge's Chambers with toilet	430 sq. ft.	
Secretary/Reception	200 sq. ft.	
Law Clerk	150 sq. ft.	
Trustee Coordinator	200 sq. ft.	
Library*	300 sq. ft.	
Deputy Clerk in Charge	200 sq. ft.	
General Office including Public Area		
2 Deputy Clerks @ 400 sq. ft.	400 sq. ft.	
3 Deputy Clerks @ 100 sq. ft. each	300 sq. ft.	
File Area	250 sq. ft.	
Work Machine Room	300 sq. ft.	
Supply Room	250 sq. ft.	
		5,350 sq. ft.
	TOTAL	9,870 sq. ft.

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS
WASHINGTON, D.C. 20544

WILLIAM E. FOLEY
DIRECTOR

JOSEPH F. SPANIOL, JR.
DEPUTY DIRECTOR

WILLIAM JAMES WELLER
LEGISLATIVE AFFAIRS
OFFICER

May 21, 1982

Mr. Ed Babbitt
Minority Counsel, Subcommittee on Public
Buildings and Grounds
House Committee on Public Works
and Transportation
2165 Rayburn House Office Building
Washington, D.C. 20515

Dear Ed:

Attached you will find a two-page presentation of the elements constituting our request for "replacement facilities" in Youngstown, Ohio. In rough square footage quantity, we have requested of the General Services Administration, as of February 17, 1981, 10,000 square feet. The enclosed two pages are exact duplicates of a request which we filed with Mr. E. W. Geiser of the Public Buildings Service on February 17, 1981. To our knowledge no subsequent events have evidenced a need for any additional square footage space.

As you well know, the General Services Administration in what I believe was an entirely good-faith endeavor has requested on our behalf square footage in excess of that which we requested, anticipating the possibility of a full-time resident district court judge serving the Youngstown facility. While the possibility of that contingency developing in fact cannot be denied, at present it cannot be substantiated. At present we know of no sitting district court judge who plans to establish full-time residency in the community of Youngstown, and we know of no caseload conditions which would presently justify assignment of a district court judge under a mandatory order of the circuit council to that location. Therefore, we believe that if your presently pending prospectus provides for the requested elements stipulated in the enclosure, the court's needs will be adequately met. Should your Subcommittee, in its exercise of discretion, choose to amend or revise or adjust the presently pending prospectus to provide 10,000 square feet in lieu of that element now contained in the prospectus, the Administrative Office of the United States Courts would positively recommend approval of the pending prospectus to the extent that it provides accommodations for judicial branch employees and services.

Subcom

Should you have any additional questions concerning this material, please feel free to telephone me personally at 633-6040.

Sincerely,

Bill Weller
William James Weller
Legislative Affairs Officer

Enclosure

cc: Honorable Lyle Williams
Ms. Nancy Vitali

SPACE REQUIREMENTS
UNITED STATES COURTS
YOUNGSTOWN, OHIO

District Court

Courtroom	1,120 sq. ft.	
Non-resident Judge's Chambers (judge's office with private toilet, secretary/reception, law clerk)	750 sq. ft.	
Adjunct Facilities (Jury Room, Witness Room, Attorney Conference Room, and Court Reporters Room)	1,300 sq. ft.	
District Court Clerical		
General Office (2) (Including Public Area)	400 sq. ft.	
Vault	100 sq. ft.	
Storage	100 sq. ft.	
Machine/Supply/File	250 sq. ft.	
		4,020 sq. ft.

Probation

Probation Officers 2 @ 150 sq. ft. each	300 sq. ft.	
Secretary/Reception	200 sq. ft.	
		500 sq. ft.

Bankruptcy Court

Courtroom	1,120 sq. ft.	
First Meeting Room	500 sq. ft.	
Courtroom Storage Closet	100 sq. ft.	
Witness Room 2 @ 200 sq. ft. each	400 sq. ft.	
Attorney Conference/Jury Deliberation including toilet	250 sq. ft.	
Judge's Chambers with toilet	430 sq. ft.	
Secretary/Reception	200 sq. ft.	
Law Clerk	150 sq. ft.	
Trustee Coordinator	200 sq. ft.	
*Library	300 sq. ft.	
Deputy Clerk in Charge	200 sq. ft.	
General Office/including Public Area		
2 Deputy Clerks @ 400 sq. ft.	400 sq. ft.	
3 Deputy Clerks @ 100 sq. ft. each	300 sq. ft.	
File Area	250 sq. ft.	
Work Machine Room	300 sq. ft.	
Supply Room	250 sq. ft.	
		5,350 sq. ft.

Parking:	District Court	2
	Bankruptcy Court	1

*If existing library facilities for the district or circuit court are available for use within the building, the requirement for a separate Bankruptcy library is waived.

QUESTION NO. 20: Mr. Weller, could you shed some light on why G.S.A. estimated the cost for two keys at $56.16 and why you wisely went to the hardware store and acquired two new keys for $3.00? What costs could be attributable to the additional $53.16 for G.S.A.?

ANSWER: To the limited extent that I am able to "shed light" on why G.S.A. estimated a cost of $56.16 for two interior-door "snap lock" keys, I am only able to submit the attached copy of a form labeled "reimbursable work authorization, "upon which the Administrative Office submitted my request and G.S.A. provided its cost estimate (See numbered block 15). The extent to which the cost estimate is explained consists of nothing other than individual estimated "labor" and "materials" quotations. When I was advised of the $56.16 figure, I simply cancelled the order and resorted to the "self help doctrine." To have pursued the matter further would have required more time and trouble than warranted in a situation in which I could unilaterally obtain two keys for a reasonable price. Instead of waiting more than two months for delivery of the keys, I obtained them the weekend after cancelling the request. Even had the price been reasonable, the time required to fill the request by GSA (more than 60 days) was absurd.

REIMBURSABLE WORK AUTHORIZATION

SECTION I - ORDERING AGENCY REQUEST

1. AND BILL TO (Complete address, including ZIP Code)

Administrative Office of the United States Courts
Audit Branch
Washington, D.C. 20544

3. AGENCY CONTACT (Name and complete address, including ZIP code)

Mr. Gerald E. Frisch
Space and Facilities Branch
Administrative Office, U. S. Courts
Suite 600
Washington, D.C. 20544

I certify that this constitutes a valid order and that funds for the amount specified in section II are available for work described. Gerald E. Frisch

2. REQUEST WORK
a. START DATE Month Day Year
b. COMPLETION DATE Month Day Year

4. AGENCY IDENTIFICATION NUMBER: 9 7 0 3 7 3 6

5. AGENCY ACCOUNTING DATA

6. FUND CODE

7. APPROPRIATION SYMBOL: 3 4 0 9

8. WORK AUTHORIZATION NO (If this is a revision)

9. OPEN END AMOUNT (To nearest dollar) $

10. AGENCY CONTACT'S TELEPHONE NO: 633-6062

11. AGENCY/BUREAU NAME: United States Courts

12. DATE OF THIS REQUEST: 6/16/83

13. WORK LOCATION

Rooms 653, 655, 657
Lafayette Building
811 Vermont Avenue, N.W.
Washington, D.C.

14. WORK DESCRIPTION (If additional space is required, use plain sheet(s) of paper)

Provide two keys for the locks on Rooms 653, 655 and 657. The three locks are keyed alike. Please have locksmith contact Ms. Sandra D. Lackey, Room 653 for ke if necessary. This request is considered justified on the basis that two of the staff members are without keys and work various hours doing legislative work. It is essential that they have access to the rooms at all time

SECTION II - ESTIMATE

PRICE QUOTATION

AC-TION CODE (a)	ESTIMATED FORCE ACCOUNT WORK-HOURS (b)	ESTIMATED COSTS: LABOR O/C (c)	LABOR AMOUNT (d)	MATERIALS O/C (e)	MATERIALS AMOUNT (f)	OTHER O/C (g)	OTHER AMOUNT (h)	TOTAL ESTIMATED COST (i)	AMOUNT TO BE BILLED (j)
A50	2	10	43.20	26	12.96			56.16	56.16
		10		26					
		10		26					
		10		26					
		10		26					
		10		26					
		10		26					
		10		26					
TOTAL	2							56.16	56.16

Estimate valid (60) calendar days from of authorization/concurrence. See blo (28c or 29c). After which this RWA wi cancelled.

16. ACTION TYPE

☒ ADD ☐ CHANGE ☐ DELETE ☐ MULTIPLE FUNCTION ☐ COMPLETION ☐ TERMINATION ☐ CHARGEBACK ACCEPTED ☐ CHARGEBACK REBILL

17. ORGANIZATION CODE	18. WORK AUTHORIZATION NO.	19. BUDGET ACTIVITY CODE	20. BUILDING NUMBER	21. PROJECT NUMBER
P1126067	M4991293	30	DC0026ZZ	

22. LEASE CONTRACT NUMBER	23. AGENCY BUREAU CODE	24. REQUESTED WORK/SERVICE DATES: START DATE Month Day Year	COMPLETION DUE DATE Month Day Year	25. BOAC CODE
	1001			

26. DESCRIBE PROJECT NATURE (Not more than 25 characters)

27. TWENTY-FIVE PERCENT (25%) LIMITATION

QUESTION NO. 21: Mr. Lite, at any time, has the official designated by Administrator Carmen to work with the courts in the New York GSA Regional Office contacted you conerning your immediate and long-range space needs?

ANSWER: No.

QUESTION NO. 22: Mr. Lite, the correspondence you have supplied for Chairman Howard's files regarding space problems for the District Court in New Jersey is overwhelming. This committee, in an effort to assist you, recent directed the General Services Administration to conduct a study as to your needs in Newark. Has any official of the General Services Administration been in contact with you regarding the study?

ANSWER: No. However, the Space and Facilities Branch of the Administrative Office of the Courts was contacted by a representative of the General Services Administration' central office in Washington, D.C., who asked for some "ballpark" square footage figures. Mr. Baldesari of the Space and Facilities Branch asked me to meet with him and a representatives from GSA's central office on my recent trip to Washington on some other business to discuss those "ballpark" figures. Mr. Baldesari and I met with Mr. Ed Guilford of GSA's central office on Tuesday, September 27, 1983. Mr. Guilford advised that GSA was "already out of time" on providing information to this committee on a Resolution and therefore needed some immediate figures. Mr. Guilford also opined that GSA "would never build a building in Newark if it wasn't for the courts and the pressure being felt from [this] committee." Mr. Baldesari and I, on almost no notice, provided Mr. Guilford with a very rough estimate of square footage figures for a new building in Newark, and I specifically advised Mr. Guilford that these figures had not yet been presented to the judges of my court and that in no way was GSA to consider them as anything other than the roughest of estimates, which would definitely be changed.

QUESTION NO. 23: Mr. Lite, I am sympathetic with you in attempting to work out the space problems to accommodate the judges. I, too, find it incredible that to add a courtroom can take so long. At this time, how can this committee best accommodate you in terms of trying to speed up the process?

ANSWER: I do not know, but I am beginning to suspect the extent and appreciate the power of this committee. The fact that this committee's staff, with a phone call, can get more response from GSA than five years of letters from, and meetings with, judges of my court impresses me and depresses me simultaneously. I am depressed by the realization that my court must come to you and ask you to intervene in order to compel GSA to perform its statutorily mandated functions; I am impressed by your ability to so compel that agency.

The space problems in New Jersey are long-standing and grow more complex with the increase in volume of litigation and the anticipated appointment of more judges. Contemporaneously, the court's relationship with GSA has deteriorated at an alarming rate. I implore this committee to act on behalf of my court in the following fashion:

A. Proposed new courthouse and federal building in Newark. The long-term space needs of the court in northern New Jersey must adequately be addressed by the authorization for and construction of a new courthouse and federal building in Newark. In order to avoid the continuing problem of lack of space for the courts, which space needs will continue to grow in the future, I urge this committee to designate in the appropriations to fund a new building in Newark that that building's primary purpose is to meet the present and future space needs of the United States courts and their supporting staff and agencies; moreover, that in any such building the courts in the future would have the right, upon reasonable notice to GSA, to expand into space within the building which might be occupied by agencies of other branches of the government, and that GSA's obligation would be to move those other agencies to allow the courts expansion. Because of past performances of GSA, I feel that without such a designation in the legislation appropriating such funds, GSA will act no differently in the future than they have in the past and will relegate the needs of the third branch to the end of the list behind the needs of other agencies. The fact that the representatives of GSA would never build such a building if it were not for the courts is but a small indication on that agency's part of the priority for the courts in Newark.

The building of a courthouse and federal building in Newark, if it is to serve the needs of the United States courts, must meet certain threshold criteria, including, but not limited to, the construction of at least a single above-ground bridge between the existing United States Post Office and Courthouse Building on Federal Square in Newark and a new structure across Walnut Street adjacent to the Peter W. Rodino Federal Building. Without a bridge between the buildings, the court will not be able to function properly. I urge this committee to mandate that GSA plan for the construction of such a bridge between these buildings before the remaining money is appropriated, so that there can be no claim at a later time that funds are unavailable for such a bridge.

Any new courthouse building in Newark must contain enough space, either internally or outside, for sufficient parking to meet the needs of the courts, including parking for jurors who serve this court in fulfillment of part of their obligations as citizens. As you know, Newark is not the safest city in America. The court is deeply concerned about the safety of its staff, the bar, the public and the jurors. I ask that this committee compel GSA to consider those needs in planning construction of any new courthouse in Newark.

B. Trenton, New Jersey, Parking Situation. For more than 2-1/2 years this court has pleaded with GSA to find parking for jurors within a reasonable distance of the United States Courthouse in Trenton, New Jersey. The Seventh Amendment to the Constitution of the United States mandates a jury trial for all controversies in excess of $20. Jurors are summoned to the courthouse at Trenton from seven surrounding counties in an area where public transportation is nonexistent. This requires jurors to use private automobiles which need to be parked within reasonable proximity of the courthouse. Recent construction in the city of Trenton has eliminated all available surface parking areas which were formerly used by jurors serving the court. Through "self-help" the court has entered into a lease for the last available parking area — three blocks from the courthouse. The parking area is located in a part of the city which can best be described as "a war zone," and the court is gravely concerned about the safety of its jurors.

For more than a year I have advised GSA of the availability of a building and 140+ space parking lot located 1-1/2 blocks from the courthouse on East State Street in Trenton. The building, the YMCA structure, has been foreclosed upon and is for sale through a consortium of four banks. I have continuously urged GSA to inquire about purchasing the building and parking lot, or the parking lot alone, and designating the parking area for use by the court. I have been advised that there are "purchase opportunity funds" available and that the Commissioner of Public Buildings Services has the authority to make such a purchase. I urge this committee to compel GSA to make a purchase of the parking lot at the YMCA and designate its use solely to the courts to alleviate the constitutional crisis which will be upon the court on September 30, 1984, when the court's lease on the present parking area expires. (That leased space will no longer be available after September 30, 1984, when the State of New Jersey will be exercising its option on the property.) With no parking available to allow jury trials, the court will cease to function in the middle vicinage of the District of New Jersey where the court has sat, by statute, since 1793.

C. Magistrate's Space, Trenton, New Jersey. After four years of promises and no action, the staff of this committee forced GSA to exercise its authority to move the United States Geological Survey from a portion of the fourth floor in the Trenton courthouse to allow the construction of a chambers and courtroom for a judge appointed in 1979 by President Carter under the last omnibus judgeship act. The Geological Society has stonewalled such a move and has had, in my opinion, at least the tacit support of GSA in its inaction. Only through threats from this committee and the intervention, I believe, of Commissioner Haase with representatives of the Geological Survey in Washington, did that agency seriously consider moving from the fourth floor to allow the construction of the judge's chambers and courtroom. As an example of the stonewalling tactics of the Geological Survey, that agency put in place a new computer system requiring the installation of a special computer floor on the fourth floor space which it had been told it was to vacate in order for the court project to begin.

The remaining space on the fourth floor occupied by the Geological Survey must be vacated to allow for the construction of a chambers and courtroom for a full-time United States Magistrate now presently located in inadequate space on the second floor in that building. Finalized drawings for the magistrate's chambers and courtroom were completed by the Space and Facilities Branch of the Administrative Office and forwarded to GSA more than a year and a half ago. There has been no effort on the part of GSA to move the Geological Survey from the remaining space on the fourth floor to allow construction of this desperately needed magistrate's chambers and courtroom. (The magistrate in question is handicapped and confined to a wheelchair. The necessity for the rapid completion of his chambers and courtroom is all the greater because of the increased burden upon him in utilizing the existing space, which exacerbates his handicap.)

Recent discussion with GSA Region 2 indicate that the move of the Geological Survey from the fourth floor to space on the first floor (which has been vacant for three years) will now take an unspecified period of time because of the possibility of the need for a prospectus to move the Geological Survey to the first floor. I urge this committee to compel GSA to either (1) immediately make plans to move the Geological Survey to the first floor at a cost less than that necessitating a prospectus, or (2) immediately locate space outside of the United States Courthouse Building in Trenton for the Geological Survey, considering, for example, the purchase of the YMCA building mentioned above and placing the Geological Survey there. I believe that only the most urgent intervention of this committee can force GSA to move the Geological Survey from the remaining fourth floor space for the creation of a magistrate's chambers and courtroom.

As a concomitant of such a move, the space freed by the move of the magistrate would be back-filled by the expansion of the United States Bankruptcy Court on the second floor in the Trenton courthouse, which is badly overcrowded. As part of the moves on this "checkerboard," GSA continually stalls any progress by requiring finalized drawings from the Administrative Office of the Courts for portions of this range of projects which cannot be necessary until well into the future. I urge this committee to require that GSA take action on the first move in the game without the necessity of blueprints for the last move, which may not be made for many months.

D. Trenton Space - District Courtroom and Chambers. The court has been advised by GSA that the fourth floor space vacanted by the Geological Survey is to be demolished and new construction to begin on November 1, 1983, for the creation of the district judge's chambers and courtroom which has been outstanding since 1979. As of the date of the submission of the answer to interrogatories supplemental to my testimony of November 1, 1983, GSA is four weeks behind schedule, and demolition has not yet begun. GSA issued a construction contract for this project and has advised the court that the space will be completed no later than April 1, 1984. If past promises by GSA are any indication of future performance, this project will never be completed on time. I urge this committee as strongly as possible to place sufficient pressure on GSA in the supervision of this construction project to compel completion as of the date promised. For a district judge to be without a courtroom or sufficient chambers for more than four years is intolerable — the court requests this committee's urgent intervention to see that the court need not wait any longer.

E. Camden Space. Legislation presently pending in this Congress authorizes three new district judgeships for the District of New Jersey, of which one will be assigned to the courthouse in Camden, New Jersey. Presently, that courthouse houses three district judges and one full-time United States magistrate, in addition to the court's support staff and a bankruptcy judge and bankruptcy clerk's office.

The Camden courthouse is bursting at the seams. There is simply no available space for any expansion of the courts without displacing other federal agencies in the courthouse building. The court has advised GSA of this problem and requested that a study be commenced of the space needs of the court in Camden, with an eye toward creation of new space for the court within the courthouse building. To this date, GSA has not performed any such study, and I fear that a repeat of the Trenton courthouse situation (where we have waited more than four years for a district judge's chambers and courtroom) will recur upon the appointment of a new district judge. I urge this committee to compel GSA to perform such a survey immediately, without awaiting a formal request for space from the Administrative Office of the United States Courts, which cannot be forthcoming until the passage of legislation authorizing new judgeships. In such a survey, GSA must be mandated to work closely with the court on the space needs and not deal with the problem as an abstract exercise.

The Camden courthouse, like those in Newark and Trenton, is located in an area of severe urban blight with high and increasing crime statistics. The security of the court, its staff, the bar, the public and jurors serving the court is as much a concern in Camden as in Newark and Trenton. Within the last year there have been numerous incidents of crime around the courthouse, including the assault upon the district's senior bankruptcy judge as he exited the building to walk to his automobile at the end of a court day. Because of the nature of the area in which the building is located, I urge this committee to require that GSA seek ways to increase security through the acquisition of parking areas, or land which can be converted to the same, immediately adjacent to the courthouse. If the court is to function properly in the administration of justice in this district it must do so without the threat of deprivation of life and health.

I appreciate this opportunity to advise the committee of these other matters through answers to these supplemental interrogatories. For too long the court has suffered the inefficiencies, and from incompetence, of GSA Region 2. I firmly believe that the only way to rectify this situation and to change the attitude of that Region in its treatment of the United States courts in New Jersey is through the efforts of this committee. Whereas the court's requests are ignored, hopefully this committee's directives will not be.

Mr. YOUNG. The subcommittee will come to order.

At this time, I would like to welcome the very distinguished Hon. John Nangle, chief judge for the eastern district of Missouri.

Judge Nangle is held in highest esteem by his colleagues for the "high standards" he upholds in carrying out the judicial process.

Further, his district is ranked among the top in the judiciary for successfully processing an abundance of cases in a most timely fashion.

Judge Nangle, I applaud you for your achievements thus far. However, I sympathize with you for the conditions under which you must work in the U.S. Courthouse located at 1114 Market Street in St. Louis, Mo.

Judge, you have had a chance to meet with some members of our subcommittee. So, it would be my pleasure to have you proceed in any manner you choose.

The full text of your prepared statement will appear in the record at this point.

[Statement referred to follows:]

PREPARED STATEMENT OF JOHN F. NANGLE, CHIEF JUDGE FOR THE EASTERN DISTRICT OF MISSOURI

We have a U.S. Courthouse in St. Louis that is really not a Courthouse. The building is called the U.S. Court and Customs Building, yet customs is no longer in the building and the various IRS offices consume a substantial amount of space. As a result the courts and court connected functions have been so squeezed that their proper functioning has been seriously impaired. The court and its various connected offices are literally crowded into inadequate and disjointed locales. Why? Because

GSA's major concern is with the day-to-day rental of space and not with any type of short or long range planning.

We do not seek a big, new, expensive Courthouse! We have a beautiful old building. It is a building that should be preserved and not allowed to deteriorate. We do need measurably more space in this building for one of the busiest district courts in our federal court system. My purpose today is not to tell you how great we are but I do believe that I must give you some information about us so that you can assess our credibility in weighing our requests to this Committee. For example, out of 94 districts:

(1) This district ranks 1st in the 8th Circuit and 7th in the nation with regard to the number of cases filed per judge;

(2) This district ranks 1st in the 8th Circuit and 6th in the nation in its speedy disposition of cases;

(3) This district ranks 1st in the 8th Circuit and 2nd in the nation in the number of cases tried per judge; and

(4) This district ranks 1st in the 8th Circuit and 9th in the nation in the percentage increase in cases filed in 1983 versus those filed in 1982. There has been an 80 percent increase in filings since 1980.

What are the problems at 1114 Market Street in St. Louis? We need more space, better facilities for our expanding U.S. Attorney's office, for the Marshal and Probation offices, for an over-crowded Clerk's office, for a new district judge and his staff, for a present judge and magistrate who are working without appropriate courtrooms or other facilities. Heretofore, and for years, these problems have been handled on a piece-meal, almost room by room basis. This is ridiculous and counter-productive. We are positive that Congress did not intend for GSA to allow this building to get in this sort of condition just so every space could be rented, when Congress provided for the GSA rental system to agencies. We are positive Congress did not mean for them to chop up the U.S. Courts and related functions and to scatter them all over this building. I have personally been in a number of U.S. Courthouses around the country. Among the metropolitan courts, ours in St. Louis has the worst space situation of all.

Connected with our space problems is the ever increasing matter of security. Our court, of course, handles all types of cases. Like all metropolitan courts, we have the usual criminal cases including those cases which are surrounded by safety threatening hazards of all parties. Furthermore, we have more than our share of bitterly contested civil matters which give rise to volatile emotions on all sides. Thousands of people are affected by our decisions and occasionally the losing parties are a bit displeased with some of these decisions.

Compounding all of this is the presence of the main IRS office in this building. Accordingly, the building is visited frequently by everyday citizens seeking tax forms, checking on tax questions, etc. Obviously, this heavy traffic worsens every problem we have concerning space and security.

The security question is not only that of protecting judges. We have the security of jurors, witnesses and office personnel to consider. The location of elevators, the heavy traffic and the spreading out of our courts all add up to making the separation of witnesses, jurors, etc. a very difficult problem.

Courts, of course, do not operate on regular hours. Its employees, jurors, witnesses (and those of the U.S. Attorney's office as well as others) must frequently work late at night or weekends. In our building as now arranged, it is impossible to provide adequate security for these poeple in parking, entering and leaving the building.

Recently, we had a prisoner escape from our parking area and, during the fracas, a stray bullet almost struck one of our judges. We have had a number of other less serious incidents. We also seem to have at least one ongoing case which gives rise to serious worries about the security of our judges and other personnel.

Before closing, I would point out that the Eighth Circuit Court of Appeals is also located in the Courthouse. This Court, too, is faced with an expanding caseload and increasing personnel. We all need your help in catching up with years of neglect (and ineptitude) on the part of the GSA!

My recommendations are:

1. The removal of all IRS offices from this building. We realize it is going to take money to move IRS out of the building and find a decent location for them. We also appreciate their problem—they must also be weary of being pushed around and moved here and there. To be of help this removal must be accomplished now. We cannot wait for the GSA to solve this problem in its typical bureaucratic way.

2. A variety of improvements be made to bring this splendid court-house up-to-date—undergound parking, modernization of the air-conditioning and heating, a new elevator for court personnel, etc.

3. The "rental system" of GSA be eliminated.

Mr. **Young**. Please proceed.

TESTIMONY OF HON. JOHN F. NANGLE, CHIEF JUDGE, U.S. DISTRICT COURT, EASTERN DISTRICT OF MISSOURI

Mr. **Nangle**. Thank you very much, Mr. Chairman, and all you gentlemen and members of the subcommittee, for taking your very busy time to listen to the litany of mundane things.

I am glad Gene Snyder is not here. He might put me under oath and I might jeopardize my status a little bit.

Mr. **Young**. That does not mean he will not come back.

Mr. **Nangle**. We will be watching.

We do have problems. I will shoot over this statement. You have it and you have many, many other things to do.

I want to tell you, first, that we are not a bunch of crybabies in St. Louis. We have worked under a lot of handicaps, but it is well beyond that point now.

We now have a U.S. courthouse in the city of St. Louis that is not a courthouse. You see it written on the building, that says U.S. Court House and Customs House, but they kicked the customs unit out some years ago, and the IRS has taken up a fair amount of space, a substantial amount of space and we are squeezed to death, "we," meaning the courts. That squeezing has seriously impaired our function.

I will tell you that quite honestly. I think the reason is the GSA's major concern is the day-to-day rental of space. You folks know more about that system than I do, but they do not do anything more than 1 day or 1 week or 1 month at a time; it is beyond their contemplation.

We do not want a bigger or a new or an expensive courthouse. We have a beautiful building. What we want to do is get it in shape to be able to use it as a courthouse. The courts need a lot more space than we now have.

I will not repeat many of the things which are in my prepared statement. The only reason for setting out the work of our district court is to let you know we have some conscientious, serious, tough, working judges. We rank, as you can see, in the whole Nation, sixth in the disposition of cases and the movement of cases. We rank second in the Nation in the number of cases tried per judge.

So, this is not just a bunch of judges who sit back on their haunches and glory in their ego.

Judge Filippine is there when I get to work in the morning and he is there late at night. That is the work we try to do.

It is not only a court or judge's problem. The U.S. Attorney's Office has almost doubled in the last couple of years. Added to that, they have put in a regional task force of 14 more people, lawyers and secretaries for the law enforcement operation, for about 14 States, as I understand it.

We need space for the marshals. We need more space for the probation officers.

The clerk's office numbers about 30 and there is space for only about 14. That is the kind of problem we have.

We have to have a judge now and Magistrate Kingland, our newest magistrate, does not even have a courtroom.

As Mr. Lite said when he was talking about the New Jersey I could almost adopt chapter and verse what he and Mr. Macklin mentioned.

Everything we have asked for thus far is responded to by a little step. It is not responded to by action, or looking down the road. I have personally, and I think I mentioned to Congressman Young earlier, I have been in a number of courthouses in this country. I have been in Miami before, and after, Congressman Shaw, and after how many years, they finally got a courthouse that I think must be working out very, very well.

In all of the metropolitan courts I have been to, none of them have space situations which are as bad as we have. It is not a bad courthouse. The courts are just squeezed within it.

Connected with that space problem is the concommitant problem of security. We handle all kinds of cases, of course. We handle the typical criminal cases, and we handle some pretty darn tough criminal cases. We had one several week ago and, not to personalize, things worked out with it, but it involved a prison escape from Marion and some big challenges.

Let's put it that way.

We have civil cases that give rise to even worse security problems. Almost every week we are trying a case in which the plaintiff is a prisoner and he is suing the sheriff or the policeman or officers of the law who allegedly assaulted him, and he is entitled to a jury trial. But quite frequently, he subpenas as his witnesses other folks who are in the penitentiary, some of whom are even on death row.

I have tried eight or nine of those in a row at times, and I will tell you it is a little bit hairy, worrying about the witnesses, worrying about the jurors, and worrying about the whole posture of the thing, and not just worrying about the judge.

That is not my story to you. We are able to fend for ourselves, but these are the problems that I do not think a lot of people consider.

In lots of these cases, there are volatile emotions that erupt. Some of our decisions are not popular. I am sure that is as trite a statement as any Federal judge can make, but that does not mean we should not be free to do what we think is right, and have our opinions resolved and resolved by an appellate court.

As I said in the statement, and I do not know how better to say it, compounding all of this is the presence of the main IRS office in our building. That means if a taxpayer from west St. Louis County wants a tax form, he will frequently come down to that main office. He does not have to, because there are other places, but it is the central office for the IRS, and it is really an imposition for a taxpayer to have to go through the security measures such as the airport type security measures just to get tax forms, just to visit the tax office with a problem, or to be summoned in to consult with a tax representative.

This goes on all the time.

The heaviest traffic we have arises from people visiting the IRS office for legitimate and business purposes.

When I talk about security of jurors and witnesses and offices, let me explain to you who are nonlawyers that if you try a lawsuit, obviously, No. 1, you must be fair and impartial to all of the parties. You want to be proper and appropriate with your jurors and the witnesses. That means that you really can't be mingling all of them together on an elevator.

On occasion, I will ride up on an elevator with a defendant. You hardly know what to say. Should I nod and say, good morning? Maybe I am misleading him to think things are going well for him, or should I look the other way?

I am serious. These are problems we meet everyday, problems we try to solve as best we can and we want to protect against some of these problems, but we still have the same problems with the mix of jurors and witnesses, and it is because of the elevator system and the IRS there. You cannot put a stop on taxpayers who are coming in. They are coming in not only on legitimate business, but the business that pays for the Congress and the courts, and so forth.

We do not operate on regular hours. Again, this is no sad song. We are judges and I can speak for my colleagues when I say we sought the jobs and we are delighted with them. It is tough, like being a Congressman, and even tough in my judgment but, nevertheless, we are not complaining about that. We do work different hours.

At times, we are there late at night and our personnel and jurors are there late at night.

I will tell you we do not have protection of any type for anybody leaving our building after hours. It is just that simple.

I do not say most of the time; we just never do.

I have a bailiff. Most judges have two law clerks. I have one, plus the bailiff, because I want to be able to afford jurors a little safer passage to the parking lot a few blocks away, and things of that sort.

We had one incident a little over a year ago when our most senior judge was out in the parking lot. Our parking lot is the same place the prisoners come in, and we use the same elevators that the prisoners use.

It is a freight elevator. One time Judge Filippine got on it and got hit in the head when it malfunctioned and it knocked him to the floor. I walk up because I wouldn't even get on that elevator.

In a high security risk case, a bullet bounced off one wall and almost hit Judge Harper. We seem to have at almost any given time one bad case going. That is not unusual for metropolitan courts.

Just before closing in the formal part of my statement, I mentioned there that we have a significant court; namely, the Eighth Circuit Court of Appeals, which is the court of appeals for the seven Midwestern States. They are housed on one floor and part of another floor. They are in approximately 1 week when they are in court holding cases, and that adds to the number of judges. They have nine active and, I believe, three or four senior judges. There is also their personnel, so that adds to the number of court personnel.

Now, what do I recommend?

I guess I really do not know. I know what I want from you folks, and that is whatever authorization must be given and taken to remove the IRS from our building, and to relocate it. I realize that is a costly step and I want to hasten to say this is nothing negative about the IRS people. They are good people, working very, very well, long hours, and I suspect they are pretty displeased, too.

I can let them speak for themselves, but they have been pushed around in this building, as well. There is no need for them to be downtown in St. Louis.

Congressman Young knows that better than I do. They could be in any number of places near Clayton, different places that would be more accessible to the general taxpayers.

In any event, I think that has to be done now. With GSA, that is down the road, and when they say down the road, I will be dust when they even contemplate this type of thing. I think our building does need a large number of improvements. It needs underground parking.

Just to digress a moment, I heard Mr. Lite speak about charges that the GSA makes. They prepared some kind of something—several pages and a couple of diagrams—and it cost us $11,000, if you can believe that, and I could have done it, and I am the worst engineer alive. You cannot believe some of the problems we have of that sort with the GSA.

We need a new elevator arrangement. I am not an engineer, but I understand it can be done.

My words may not be correct, but I have recommended that the rental system of the GSA, at least with the courts, be eliminated because it kills us. Everytime you turn around, they are charging us for something. If I want to get a light bulb, I have to sign a paper or the clerk does. She takes it to the office, they approve it, and it takes another 3 or 4 days just to get the light bulb. You cannot believe the redtape that we have to go through in order to get anything of any sort done.

We have a security guard in the back and that guard spends three-fourths of his time worrying about trucks coming in and out, worrying about security and, yet, he is charged to the judicial office of the AO.

Those are the kinds of things I think that result from this rental arrangement with the U.S. courts. It may be successful.

It may be necessary in the regular course of Government business in the handling of its buildings, but I really cannot see it in our territory.

Congressman Young, as far as a formal statement, that is all. I have jumped over some things that you may consider significant. If you have any questions, I will be glad to try to answer them.

Mr. YOUNG. Thank you very much, Judge.

I think you have come right to your recommendations. As you indicated, you are not looking for a new monument in that particular area, and if something can be done with the existing facilities, it should be done.

I have a series of questions we had originally, but you have covered them enough that I will take a look at them for a second.

I understand the elevator situation and the parking situation.

How is your working relationship with GSA?

Mr. NANGLE. Their personnel are all right, but they kill you with the bureaucratic response. You write one letter and you get three back. You get enclosures that are this thick, you have two phone calls, and, someone is sent, you have an entourage that shows up at your office. I said, forget it. You win and I lose.

Mr. YOUNG. The other thing was the IRS.

I think that would make some sense to move them if we prevail upon the GSA to take a real close look at the IRS situation to see if anything could be done at all.

I know in the Mart Building across the street, we are having a report from GSA relative to the Mart Building, because they were supposed to have expansion there costing $60 million or $70 million, and I think the committee wants to make sure that it is cost effective to do that, or try to consult the city of St. Louis to see if they have any thoughts about that being so close to police headquarters, and the whole city hall situation.

In testimony last week, Mr. Corman, the Administrator of GSA, testified that the type of security we provide at the Federal buildings will be changed where GSA will install electronic systems and establish roving Federal protective officers around the perimeter of the building, as opposed to what is happening now where protective service offices are generally located just at a location as you come in the doors.

Would you comment on this sort of change as it might impact on St. Louis?

Mr. NANGLE. First, that would be acceptable if I understand what you are saying. If they are going to put the airport-type security at the entrance and have roving people in uniform, that is a step up in the right direction. That is better than what we have now, assuming they have the other details in the back and sufficient guards doing the movement.

But they are not going to be there on weekends or at night, maybe, after 7 o'clock.

I trust our media people will be discreet. We have taped very serious and important documents. They are sealed, but that is not exactly the world's greatest protection. We are totally vulnerable to anybody walking into that building at night. You can imagine without me saying the types of documents we have in court cases, and in the clerk's files. They're the most serious documents that you can conceiveably keep, and they are not really protected. It is a joke right now.

Mr. YOUNG. Having had a chance to speak with some of the former U.S. attorneys in that area and having visited U.S. attorneys' offices sometime ago, we were shown the law library and how, when the lawyers want to do their research, they almost have to take their papers out with them because of the public just walking all over the place.

Mr. NANGLE. The grand jury room is right across from the health unit, and we have had very difficult times. If you have observed from our papers, there has been really no secrecy as to who is going in and out, and that has had a direct impact on the willingness of people to testify, to cooperate, when they know there is just nothing at all that is secret about our grand jury proceedings. We just do not have anyplace for them.

Mr. YOUNG. I know that elevator in the back is pretty interesting. You have to be pretty agile to jump up from the old cobblestones to get up those steps.

Thank you very much, Judge.

I appreciate your appearance today.

The committee is paying attention to that particular situation.

Mr. Shaw.

Mr. SHAW. I appreciate your coming here today, Judge.

Although your testimony was not quite as hostile as the witness before you with regard to your relationship with the GSA, I think it does point up an area of great concern. It is one that suggests now is the time for this committee to take a hard look at these things, how the procurement process works, how the expansion of building process works, and the GSA relationship with other agencies.

I think the management of public buildings should be under one agency without each branch of the Federal Government left to do as they please—I do not mean it with that connotation—but anytime you put together a bureaucracy, you are going to have empire building.

I think there have to be some checks and balances. I think that requires us here in Congress to look closely and very carefully at what is going on, and what those relationships are.

All of the witnesses who have appeared here today know that we in Congress also have to deal with the GSA regarding our own building needs, and some of those experiences have been good and some have been as bad as yours have been.

I have no firsthand knowledge of the situation in St. Louis, and I know you are speaking as one judge, but there are many judges across the country who are having a similar problem.

I thank you for coming.

Mr. YOUNG. Judge, thank you very much. We appreciate your testimony today.

Mr. Windman, thank you for your courtesy in waiting.

I understand your testimony concerns H.R. 630, which is a bill to establish public buildings policies for the Federal Government and to establish the Public Buildings Service in the General Services Administration.

The full text of your prepared statement will appear in the record at this point.

[Statement referred to follows:]

PREPARED STATEMENT OF ARNOLD L. WINDMAN, PRESIDENT, SYSKA & HENNESSY, INC., NEW YORK, N.Y., ON BEHALF OF THE AMERICAN CONSULTING ENGINEERS COUNCIL

Mr. Chairman, my name is Arnold Windman. I am the president of Syska & Hennessy, Inc., a multi-design architect/engineering firm. My testimony today is on behalf of the American Consulting Engineers Council (ACEC). We appreciate this opportunity to offer our views on H.R. 630, the Public Buildings Act Amendments of 1983.

Syska and Hennessy has undertaken many federal public buildings projects over the years. Recent projects include the mechanical and electrical engineering for the recently completed Social Security Building in Queens, New York, as well as the mechanical and electrical engineering for the CIA Headquarters Building in Langley, Virginia.

ACEC is a national federation of more than 3,800 privately-owned engineering firms. As a profession, consulting engineering spans the study, design and inspection phases of almost all construction projects. Fields of practice include civil, electrical, mechanical, structural and geotechnical, among others. While many ACEC members work solely for the private sector, others provide engineering design services for federal agencies or federally-assisted grantees.

We commend you for your interest, Mr. Chairman, and that of the other Subcommittee members in shaping a program that will assure a responsible and efficient public buildings policy. ACEC believes the Amendments contribute greatly to establishing a coherent, rational plan for managing our nation's public buildings.

With regard to H.R. 630, we have the following comments on specific sections of the bill.

Preliminary engineering and design

Section 2 of the bill would authorize the Administrator of GSA to carry out preliminary engineering and design for the alteration or construction of a public building before Congress actually authorizes the project. We support this change. The effect of the Amendment will be to significantly speed up the process with attendant savings on construction and operation costs. The engineer considers not only the impact of "first costs", but also the vitally important operation and maintenance costs associated with the life cycle costs of a facility. While there are risks involved (for example, Congress may decide not to authorize a particular project), we think the investment in preliminary design will promote savings viewing GSA's building program as a whole.

Leasing

We understand the intent of Section 3 of the bill is to reduce the government's investment in leased office space. We support a curtailment of the federal leasing program. Notwithstanding that architects and engineers design the buildings, whether leased or owned by the federal government, we think the trend toward leasing should be reversed. In recent years the federal government has moved from primarily owner to primarily renter status. Over the long term, economics of ownership outweigh the temporary benefits of leasing.

From a design standpoint, leased buildings are often developed on a speculative basis with less concern for quality design and economical life-cycle cost than would be the case if the government were the owner.

Federal public buildings management program

Section 4 enumerates the framework by which GSA and other agencies reponsible for public building planning, design and construction can produce a federal public buildings management program. The elements spelled out in Section 4 are essential. We specifically note the inventory of public buildings (p. 10), the five-year public building plan (Section 4(b)(1) p. 12), the preliminary design and engineering authorization (Section 4(a)(7), p. 11), and the required report to Congress (Section 4(a)(1), p. 10). We also applaud the Committee for including basic standards for design in Section 23 (p. 23) as a guide to federal agencies. While obviously there are many other such standards, they are more properly included in agency guidelines rather than statute.

Putting together a building that incorporates a sense of appropriate federal presence, energy efficiency, economy of materials and systems as well as concern for the public and private users of the space is a very complicated job. It requires an integrated building design. It also calls for the complete involvement of the client. It requires an exchange of ideas between the user, the architect and the engineers. Public Law 92-582, the Brooks Act, recognizes the expertise of architects and engineers is essential to that process. During the debate on Public Law 92-582, the supporters, some of whom sit on this Subcommittee, made provision for design competitions where the additional time, expense and unique nature of the project justified their use. This law encourage technical competition among design professionals and directs the government to seek out the most qualified A/E team.

Developing a preliminary design is more than an elementary exercise—it demands a massive team effort by architects, structural, civil, mechanical and electrical engineers, clients representatives, and users of the proposed building.

Once a building design is selected, many of the building costs are substantially determined. Such considerations include: if the building is energy efficient; if the design has an economical structural system; if the building has a sound foundation system; or if the building design will allow flexible use, encourage expansion, or promote easy and economical maintenance. The existing selection system has served federal and other public clients well by producing efficient, soundly constructed buildings.

The Nation's architects and engineers have a history of producing top quality imaginative buildings for public and private sector clients.

In March, 1983, ACEC held its 17th Annual Engineering Excellence Awards competition. The designs submitted were judged on their innovation, cost effectiveness, and the other factors that advance the state-of-the-art in various engineering disciplines. Two of the award winners were public buildings which were selected because of their responsiveness to the clients' needs, cost effective use of materials and special attention to use characteristics or site restrictions.

The award winning public buildings are:

The California State Capitol, Sacramento, California, designed for the California State Legislature.

The United States Pavilion, Expo '82 World's Fair, Knoxville, Tennessee, designed for the United States Department of Commerce.

An appendix describing the projects is included with this statement.

Each of these projects illustrates graphically the effectiveness of design which results from the client-design professional relationship. Each project includes one or more technological applications which responds to a special need of the client or a unique aspect of the site. The California State Capitol's 108-year-old west wing was reconstructed to make the Capitol capable of resisting earthquakes and at the same time innovatively restored in a manner befitting its historical significance. The major attraction at the 1982 Expo World's Fair, the U.S. Pavilion, was designed to symbolize the nation's advances in efficient use of energy and the application of high technology. The Pavilion, as a symbol of the United States, was determined to be a design of unique nature sufficent to warrant design competition under P.L. 92-582.

PUBLIC BUILDINGS SERVICE

Section 20 establishes in the General Services Administration a Public Building Service. Currently, the federal government generally follows a policy of relying on the private sector to provide needed services. While we believe it is necessary for government design professionals to maintain design expertise sufficient to fulfill managerial and other inherently governmental functions, we trust this section does not envision that public building projects will be designed in-house by government employees. The buildup of large in-house design staff would be expensive and counter productive.

We are firmly committed to the employment of highly motivated design professionals within the federal government. However, these architects/engineers should be utilized as project administrators to work in concert with outside professionals to insure the complete evolution of a project. In-house staff helps the client (the government) obtain the utmost from private A/Es. Together they implement a high standard of design. Design professionals and project administrators must enter into a collaborative relationship to insure that an efficient and cost-effective design process evolves, thus assuring excellence in federal architecture. It is imperative for a strong economy that the government rely upon the private sector.

Section 20(c) (p. 21) specifies qualifications required for the position of "Supervising Architect." The supervising architect should be someone with the training and experience, the professional qualifications, to practice architecture.

A public official with these credentials is able to understand design complexities. He will be able to manage both the building design and the construction process. We believe that this position demands this background and is essential to support a program to improve design quality. We endorse this provision.

CONCLUSION

H.R. 630 gives federal agencies the framework and the flexibility to realize design excellence and innovation in federal facilities. It modernizes the public buildings system, adds professionalism and responsiveness and permits excellence without additional constraints on the current selection system. As such it is good legislation and ACEC supports it and urges its passage.

APPENDIX

1983 ACEC ENGINEERING AWARD EXCELLENCE WINNERS FOR PUBLIC BUILDING DESIGN

THE RESTORATION OF THE CALIFORNIA STATE CAPITOL

Project description

To make the California State Capitol capable of resisting earthquakes and at the same time restore it in a manner befitting its historical significance, innovation was a keynote throughout the project.

The State Legislature made several legislative innovations, including exempting major areas of the project from competitive bidding, and providing for direct selection of architect and contractor. In an unprecedented collaboration between owner, architect, engineer, and contractor, the project team peeled away the deteriorated West Wing's century of alternations and developed a method for rebuilding the structure to meet current earthquake standards.

Because of the mass and rigidity of the brick building, special architectural and seismic design criteria were developed for its rehabilitation. The selected method of reconstruction involved demolishing and reconstructing the interior, while strengthening and preserving in place the architectural features of the exterior walls, the rotunda, the cast-iron colonnade, and the dome. Construction of the reinforced concrete shear wall structure within the confines of the original brick structure began with strengthening of exterior walls from the top down. The new interior concrete walls and floors provide a structural tie to the exterior brick and bear upon a new reinforced concrete mat foundation built over the original footings.

The structural work was performed under a negotiated Guarantee Maximum Structural Sum contract. The estimated cost of the work was $15 million; the final cost $13.2 million. Savings were shared between the contractor (20%) and the state (80%). The entire project cost, $67 million, has received wide discussion, but those who have been the splendidly restored historic structure generally agree that the money has been well spent and that the restored Capitol is a credit to the State of California.

Client requirements

Because of the scope and complexity of the work, the project team had to be able to closely coordinate all aspects of the job and:

Develop a structural design that would retain the West Wing's historical dimensions and exterior;

Research the history of the building, and catalog, remove, restore, replace or replicate all historic materials; and Prepare structural, architectural, mechanical, and electrical plans, coordinating these efforts with all of the other tasks.

With regard to the structural reconstruction, this meant:

Maintaining the original architectural dimensions of all rooms;

Preserving the architectural fabric of the exterior walls;

Preserving and strengthening the original rotunda and domes and porticos in place;

Developing methods for strengthening the total building to meet California's stringent earthquake criteria;

Developing a structural strengthening scheme compatible with the contractor's construction methods;

Providing certain structural design flexibilities because structural drawings needed to be completed about one year before final architectural and mechanical/electrical drawings; and

Meeting demanding time schedules for working drawings.

Description of unique or unusual design features and solutions

Dynamic structural analyses.—Computerized soil-structure interaction analyses used a finite-element soil model.

Existing footings.—Existing spread footings were used to carry all vertical loads.

Concrete needle beams.—Needle beams transferred forces through rotunda walls to foundation mat.

Anchorage systems.—Remaining brick was anchored to new concrete using rock-bolt techniques.

Pneumatically placed concrete (shotcrete).—Using shotcrete allowed strengthening of brick wall from top downward.

Mechanical bar splices.—Threaded reinforcing bar splices were used extensively facilitating construction phases.

Unique shoring systems.—Shoring systems provided construction support and allowed rapid reuse.

Guaranteed maximum structural sum contract for construction.—Negotiated contract facilitated structural design and reconstruction, allowing cost savings.

Design team approach.—Continuous team participation (owner, architect, engineer and contractor) enhanced efficiency.

How well the project is meeting the needs of the client and the conditions of design

Since the rededication of the West Wing in January 1982, the Capitol has reinstated as a lively, functional seat of state government. California state legislators and support staff, who had moved to temporary facilities during reconstruction, have returned to work in the elegant structure. Information offices and museums accommodate large numbers of visitors, who can tour and admire the many features of the restored Capitol without interfering with the business of the Legislature.

The rehabilitation compromised neither historical accuracy nor 20th century function. Within the authentically restored turn-of-the-century building is a modern, earthquake-resistive structure that maintained the historical dimensions of rooms and the architectural fabric of the exterior elevations. Modern telecommunications systems were provided for and have been installed. A master computer system responds to fires, elevator emergencies, and other functional needs and provides tighter surveillance than ever before.

Since the structure has not been through and earthquake, it is not possible to evaluate the seismic performance of the building. However, the U.S. Geological Survey has installed instrumentation on the building to measure its response if an earthquake does occur.

The structural reconstruction and architectural restoration of the West Wing has received considered praise and acclaim in many national publications such as *Engineering News Record*, *Progressive Architecture*, and *Time*, and major magazines and newspapers throughout California. Feature articles have covered the many aspects of the project in depth, with great prestige accruing to the participating firms and their respective professions. This project is probably the most extensive and complex effort in the nation to date to preserve a single historic structure and is recognized as an outstanding example of building restoration.

THE UNITED STATES PAVILION EXPO 1982 WORLD'S FAIR

Project description

The United States Pavilion at Expo '82 in Knoxville was designed and constructed to represent advances in energy resources and high technology applications developed by the U.S.A.

The design team was selected through a national competition conducted in 1979.

The project consisted of the main exhibition building and an underground theatre for IMAX films.

The main exhibition building is a linear prism, 417 feet in length, 145 feet in width and 124 feet in height. It's triangular cross section is structured by steel trusses extending from a series of steel cages located on the south facade. The sloping north facade extends from a short roof section and is supported by eight sets of double trusses located 45 feet center to center.

The prismatic effect is generated by cantilever trusses located at the east and west ends. The second, third, fourth, and fifth sets of trusses (from the east end) extend northward to the ground and are supported on concrete buttresses.

The trusses on the east and west ends develop a dramatic effect through their spectacular cantilever structure. The cantilevers extend outward a distance from 80 feet to 111 feet, and support several interior floors.

The cantilever trusses are supported solely by the 12 foot by 20 foot square structural steel "cage" extending down to post-tension caissons which are socketed into rock.

The IMAX theatre consists of long span trusses (135 feet) supported on post-tension retaining walls.

The original budget established by the Owner was $28.5 million. This included the buildings, exhibits, films and operational costs. The budget was rejected by Congress early in 1980 and a new budget of $20.8 million was established in September 1980. The building budget was $10.5 million at that time. The project was constructed within that budget.

Client requirements

The client's requirements were articulated in the design solution selected by the Department of Commerce in their national competition.

Following is an outline of the salient requirements.

1. Aesthetic appeal: The architectural design dictated a structural system that would provide a dramatic geometry.
2. Encapsulation: The requirements for column free exhibit space resulted in an encapsulation of space utilizing hanging floors, long span structure, and record exceeding cantilevers.
3. Public safety: The cantilevered portion of the building would contain several structural floors supporting exhibits and public space. Our requirements were to meet or exceed industry standards for live and dynamic loading as well as deflection requirements.
4. Economy: Due to reduced budget, the project required economy in all phases from the foundation to the super-structure.
5. Ease of construction: Due to a short construction schedule, it was required to use "Fast-Track" construction techniques. All the structural components were designed from off-the-shelf items, as well as optimization of industrialized construction in order to reduce field labor and to increase speed on the project.
6. Fire resistance: The structure was defined as an "Exposed Steel" structure which required a minimum fire protection, however, it was also necessary to conform to Building Code requirements.
7. Residual uses: The structure was to be designed to incorporate flexibility that would permit a variety of residual uses following Expo '82.

Description of unusual design and solution

1. Cantilever trusses supported on towers: Building floors cantilever 108′ maximum with 20′ back span.
2. Vertical and horizontal deflection control: Horizontal diaphragms reduced deflection to minimum.
3. Deep foundation: Cantilevers resisted by steel cages anchored by post-tensioned rock socket.
4. Camber control: Vertical/horizontal dead load deflection controlled by camber during the construction.
5. Diaphragm action: Deflection control/economy enhanced by series of post-tensioned diaphragms.
6. Computer design: The structure was analyzed as a space frame and finite elements by the "GTSTRUDL" program.
7. Economy: Post-tensioning diaphragm and computer application saved 465 tons of steel.
8. Fire protection: Fire safe structural steel design required only 30% of fire proofing.

Meeting the needs of client

1. Public Safety: The structural design implemented was developed for public safety. For instance, the design live load is 100 psf on floors and the factor of safety at the uplift rock socket is 3.0.
2. Encapsulation: Using cantilever floors and long span steel joists, the floors are open widely. This provided maximum flexibility for exhibition.
3. Aesthetic Appeal: The structural design of paired sloping trusses provided architectural asthetics and harmony.
4. Diaphragm: By using post-tensioned concrete diaphragms, the project saved approximately 465 tons of structural steel.
5. Time Schedule: Although working on a limited time schedule, the project was completed without major alterations.
6. Fire Protection: The client required an exposed steel structures. Therefore, this project was one of the first structures in the United States to be designed with the concept of "FS3" (fire-safe structural steel), which is a national fire protection design method for steel framed structures. The exposed structural steel provided the desired asthetics and construction budget savings.
7. Residual Uses: The design was carefully planned to accommodate residual uses following the fair. Future floors can be placed for residual use, if required.

Mr. YOUNG. Please proceed.

TESTIMONY OF ARNOLD L. WINDMAN, PRESIDENT, SYSKA & HENNESSY, INC., N.Y., ON BEHALF OF THE AMERICAN CONSULTING ENGINEERS COUNCIL

Mr. **Windman**. Thank you very much, Mr. Chairman.

I have gotten an education in the problems of the judiciary today. They are really incredible.

Mr. **Young**. I don't know if we can ever resolve them.

Mr. **Windman**. Mr. Chairman, and members of the subcommittee, my name is Arnold Windman. I am president of Syska & Hennessy, Inc., a multidesign architect/engineering firm. I am also chairman of the New York State Board for Engineering and Land Surveying.

I am pleased to be here today to testify on behalf of the American Consulting Engineers Council.

As you may know, ACEC is a national federation of approximately 4,000 privately owned architect/engineering firms representing about 110,000 employees. Our fields of practice include electrical, mechanical, structural, and geotechnical engineering, among others.

While some ACEC members work solely for the private sector, most of our membership provide engineering services for Federal agencies or federally assisted grantees.

We commend you for your interest and that of the subcommittee in shaping a program that will assure a responsive and efficient public building policy.

ACEC believes the bill contributes greatly to establishing a coherent, rational plan for managing the Nation's public buildings.

I have left with the subcommittee a written statement and, as the chairman indicated, I would like to have it put into the record.

Mr. **Young**. Without objection, it has been included in the record.

Mr. **Windman**. The statement closely parallels the views presented for the record by Mr. Vosbeck of the American Institute of Architects.

As a practitioner representing the interprofessional—a vitally important segment of the ACEC membership, I am pleased to share the views of the American Institute of Architects. The architects and intraprofessionals are responsible for quality and innovative design of public buildings. Together, our creative efforts assure the safety, efficiency, and economy of a building's structures.

Because of the shared views of the ACEC and the AIA, I would like to stress to the committee only a few points at this time.

Section 2 of the bill would authorize the Administrator of GSA to carry out preliminary engineering and design for the alteration or construction of a public building before Congress actually authorizes the project. We support this change.

The effect of the amendment will be to significantly speed up the process with attendant savings in construction costs and significantly earlier occupancy.

Furthermore, when the impact of even moderate inflation on construction costs is considered, the risk of spending money on early design carries with it the potential of very large rewards. While it is true that Congress may decide not to authorize a particular project, we think the investment in preliminary design will promote substantial savings when viewing GSA's building program as a whole.

The second point pertains to leasing. We understand the intent of section 3 of the bill is to reduce the Government's investment in leased office space. We support a curtailment of the Federal leasing program. Notwithstanding that architects and engineers design the building whether leased or owned by the Federal Government, we think the trend toward leasing should be reversed. In recent years, the Federal Government has moved from primarily owner to primarily renter status. Over the long term, economics of ownership outweigh the temporary benefits of leasing.

From a design standpoint, leased buildings are often developed on a speculative basis with less concern for quality design and life cycle cost than if the Government were the owner.

The problem seems to us to revolve around the lack of a capital budget in the Federal fiscal structure; owning is cheaper than leasing, when the total useful cost of a building is considered. Without this capital budgeting ability to spread the cost over the design life of the building, political considerations will continue to dictate the trend toward leasing.

The third point pertains to the appointment of a supervising architect. Section 20 establishes within the General Services Administration a Public Buildings Service.

Currently, the Federal Government generally follows the policy of relying on the private sector to provide needed services. While we believe it is necessary for Government design professionals to maintain design expertise sufficient to fulfill managerial and other functions for the Government as a client and building owner, we trust that this section does not envision that public building projects will be designed in house by Government employees. The buildup of large in house design staffs would be expensive and counterproductive.

We are firmly committed to the employment of highly motivated design professionals within the Federal Government. However, these architect/engineers should be utilized as project administrators to work in concert with outside professionals to insure the complete evolution of a project.

Mr. Chairman, that concludes my statement.

I would be happy to answer any questions.

Mr. YOUNG. Thank you very much, Mr. Windman.

In your testimony, you state that ACEC believes the amendments incorporated in H.R. 630 would be helpful. I am pleased to note that your company has undertaken public projects over the years. In that context, could you comment from your own experience, about working for the Federal Government as compared with working for the private sector.

We have heard about bureaucracy and redtape associated with the Government making it difficult to get things done for the Government in a timely fashion, and as such, a project costs the Government more than the private sector.

Do you feel H.R. 630 goes far enough in attempting to streamline GSA's activities in order to put a good program in place?

Mr. **Windman**. I would say, first of all, everybody who has worked with the GSA has experienced the time problems and the bureaucracy and the impact of that on building costs.

When an engineer has 6 months to design a project and GSA has 6 months to review that design, there is something wrong with the process.

The problems, from where we sit, are more administrative within the agency than statutory. I would hope that the Administrator mentioned in the bill would have the authority and administrative expertise to streamline operations.

Mr. **Young**. Twelve months, particularly, when you have people with the same ability reviewing what you have already done, does seem like a long time, and hopefully GSA would have engineers and architects on their staff to review that so it does seem a little lengthy to try to get some sort of project started.

In your testimony, you state the trend toward leasing should be reversed, and that over the long term economics of ownership outweigh temporary benefits of leasing.

Could you elaborate on that?

Mr. **Windman**. In the private sector, people lease in order to prove their balance sheet. If they had their druthers, they would buy. There is no question you are paying the landlord a profit. The nearly $900 million annual bill for GSA leasing is an inefficient use of Federal funds which leases lower quality Government work space than that available through rehabilitation or new construction.

If the Federal Government had a method of capital budgeting, whereby the initial cost to buy or construct a building were spread across the design life of the building, the cost savings associated with constructing or buying versus leasing would become apparent.

Mr. **Young**. In your testimony you point out the importance of an appropriate Federal presence and the concern for the public and private users of space. Further, the building should conform to complement scale or existing plans surrounding buildings.

In your opinion, does the private sector as well as the Federal Government consider these elements sufficiently prior to constructing a facility?

Mr. **Windman**. I would say the responsible private builder does. When you get, for example, people like Union Carbide and Procter and Gamble, and Texaco, they are probably more sensitive to their surroundings, because the surroundings contain their customers, so they are very sensitive to what they build in most areas.

Mr. **Young**. That is fine.

I want to thank you very much and if the staff feels there are any additional questions, we will submit them to you and we want to thank you very much.

The committee will stand in recess until Thursday.

[The subcommittee was recessed at 2:58 p. m.]

Subsequent to the hearing, supplemental questions were submitted to Mr. Windman by Representative E. Clay Shaw, Jr., the questions and responses follows:]

AMERICAN CONSULTING ENGINEERS COUNCIL,
Washington, D.C., December 6, 1983.

Hon. E. CLAY SHAW,
Ranking Minority Member, Subcommittee on Public Buildings and Grounds Committee on Public Works and Transportation, Rayburn House Office Building, Washington, D.C.

DEAR CONGRESSMAN SHAW: It was a pleasure to appear before the Subcommittee on Public Buildings and Grounds on November 1, 1983 to present the views of the American Consulting Engineers Council (ACEC) regarding the Public Buildings Act Amendments of 1983.

We appreciate the opportunity to respond to supplemental questions for inclusion in the hearing record. Enclosed is our response.

We look forward to continuing to work with you in developing an effective public building program. Please don't hesitate to contact me or the ACEC staff if we can be of further assistance.

Sincerely yours,

ARNOLD L. WINDMAN, *Treasurer.*

Enclosure.

ARNOLD WINDMAN'S RESPONSE TO CONGRESSMAN E. CLAY SHAW'S QUESTIONS REGARDING H.R. 630

Question 1. The Brooks Act specifies the procedure for the procurement of architectural and engineering services. Has the Brooks Act proven effective and in what instances do you feel a design competition may be a good method of procuring these services?

Answer The Brooks Act has proven extremely effective in providing the government with the highest possible quality of professional, architectural and engineering services at a fair and reasonable price. The professions are firmly committed to practicing within the language and intent of this legislation. While the American Institute of Architects will probably have a more thorough discussion of the design competition issue, we feel it is also appropriate for the American Consulting Engineers Council to offer its views in this regard as our members frequently are called upon to participate in these competitions as sub-consultants to architects or as members of joint ventures.

Putting together a building that incorporates a sense of appropriate federal presence, energy efficiency, economy of materials and systems as well as concern for the public and private users of the space is a very complicated job. It requires an integrated building design. It also calls for the complete involvement of the client. It requires an exchange of ideas between the user, the architect and the engineers. Public Law 92-582, the Brooks Act, recognizes the expertise of architects and engineers is essential to that process. This law encourages technical competition among design professionals and directs the government to seek out the most qualified A/E team. The Nation's architects and engineers have a history of producing top quality imaginative buildings for public and private sector clients.

During the debate on Public Law 92-582, its supporters, some of whom sit on this Subcommittee, made provision for design competitions where the additional time, expense and unique nature of the project justified their use. When a building layout, size, shape, location on the site, glass areas, exterior materials, and wall systems are selected by a design competition rather than a thorough evaluation of all these considerations, construction costs are impossible to control. Competitions have their place—projects of unique national or regional significance—where the expense, time for completion and life-cycle costs are not controlling. However, design competitions are not a panacea for good design.

The fundamental problem, as we see it, with design competitions is that insufficient time and money is allocated to permit the results to be meaningful. It is extremely difficult to come up with a cogent, well thought out engineering solution for a $75 million government office building in the four to six week period generally allowed for the competition.

Furthermore, the competitions are a financial disaster to the firms involved, as frequently their out-of-pocket expenses for salaries alone exceed the competition fee.

The tendency of competing firms to exceed allowances in design competitions is prevalent, not only due to an intense desire to obtain the contract but also due to professional pride because a firm wants its proposal to be best for reasons of competitive prestige as well as contract award. This tendency to exceed allowances places smaller firms with limited capital at a distinct disadvantage. Design competitions, therefore, must ensure that there is an equalizing mechanism to prevent allowance excesses.

Even if the time and money problems could be solved, we would still recommend that competitions be limited to significant projects having a major impact on the community in which they were to be constructed.

Question 2. Would you explain for us the difference between preliminary and advanced engineering and design? In the long term, which would be a more practical method to adopt, especially when you consider the number of people involved in the design process and the time it takes to approve construction projects?

Answer. To answer this question, we must first point out that the terms "preliminary" and "advanced" engineering and design are not those generally used by industry in the normal sequence of the design process.

The period of design which begins with the inception of the project and ends with the issuing of the working drawings and specifications for bidding is divided into three generally accepted milestones, namely schematic design, design development and working drawings:

The schematic design phase is the phase of the architect's services in which the architect consults with the owner to ascertain the requirements of the project and prepares schematic designs studies consisting of drawings and other documents illustrating the scale and relationship of the project components for approval by the owner. The architect also submits to the owner a statement of probable construction costs based on current area, volume, or other unit costs. These estimates are, at best, experienced estimates.

The design development phase is the phase of the architect's services in which the architect prepares the design development documents from the approved schematic design studies for approval by the owner. These documents are prepared in sufficient detail at this phase for labor and material take-offs to be made and the resultant cost estimate is now sufficiently accurate for authorizing purposes.

Working drawings are the graphic and pictorial documents showing the design, location and dimensions of the elements of a project and are used for bidding purposes. Drawings generally include plans, elevations, sections, details, schedules and diagrams.

We are strongly in favor of the government authorizing the preparation of working drawings and specifications prior to the project being authorized for construction by the Congress as we feel that the potential rewards in savings to the government far outweigh the risk of expending funds for working drawings for the projects which may not be authorized.

Generally speaking, the preparation of working drawings and specifications, from inception to completion, requires anywhere from 12 to 18 months. Even at the current relatively low inflation rate, shaving 18 months from a building's construction schedule will result in cost savings. Finally, and more importantly, the facility would be available for occupancy in a far more timely manner.

At the very least, completion of design development should precede authorization of construction funding so that Congress can utilize accurate cost estimates and sufficiently developed design to make intelligent determinations with respect to individual projects.

Question. 3. In the past, you have supported the concept of basic standards for design. Would you also support the concept of a standardized design for specific types of buildings which could than be constructed according to the same plan in different parts of the country?

Answer. We continue to support the concept of basic standards for design. These, as you are aware, might include such criteria as energy usage, interior, environmental conditions, lighting standards, space allocation per employee for various departments and a host of others.

We are not in favor of the concept of a standardized design which could be constructed according to the same plan in different parts of the country. First, from a practical standpoint, it has been general experience that the specific site modifications that are required for a standardized plan are so numerous that most, if not all, of the perceived advantages are lost.

Secondly, it seems to us that the government, which is the country's largest builder, should be more responsive to the specific site and community requirements of each project and that in a sense, the adoption of a standardized plan is almost an arrogant imposition on the local community.

Question 4. In many instances, the cost of constructing a Federal building is in excess of what it would cost to construct equivalent commercial space. In your view, to what would you attribute these excess costs—is it GSA's management, other Federal Policies, or what?

Answer. The two most significant factors effecting the cost of constructing federal buildings are time and the relationship of GSA to the building process.

With respect to time, when you consider that it often takes GSA a year to select the design team and that the extensive government reviews of the design project often take as much time as doing the design itself you can easily see that federal construction projects may take anywhere from 18 months to 3 years longer than the private construction of similar space. By contrast, using procedures identical to the Brooks Act selection procedure, most major private sector awards are made within 4 months.

Generally, in private construction, the owner is a participant in the design process attending weekly or bi-weekly review meetings and having a continuous dialogue with the members of the design team. Private owners generally do only cursory reviews of design product since they have been intimately involved in the process since its inception. Furthermore, a private owner assigns a very limited staff and these are generally executives sufficiently high in his organization to have authority to make the myriad of detailed decisions which are required.

The government, on the other hand, sits back from the process and engages in lengthy reviews which essentially suspend activity by the design team. Since the government is not an ongoing participant in the managing of the project, the ability of the design team to get necessary information and more importantly, decisions from the government, is badly impaired in our view. An administrative change is required to put the government's management of projects more in line with the organization and procedures of private enterprise.

Some time ago the GSA's Office of Design and Construction, under its then Assistant Commissioner, Mr. David Dibner, began to explore this approach. For some reason, the effort never got off the ground.

Federal policies also significantly contribute to facility costs, and on federal facilities in particular. Notwithstanding that ACEC recognizes the need for barrier free environments and therefore supports the use of handicapped standards for federal buildings, there is no question that total access requirements add greater costs than restricted access standards.

Numerous federal policies, while less obvious than the handicapped standards, result in higher costs associated with public facility projects. Unfortunately, there is currently no administrative mechanism to adequately assess these "hidden costs". Cost analyses of the effects of federal regulations required at various project development and construction stages could greatly assist the government in identifying areas of over-regulation that contribute to increased project costs through delays and wasted time without significantly contributing to the quality of the project.

ACEC strongly endorses the adoption of a federal capital budget within the "unified" budget as a practical means of identifying these "hidden costs".

Question 5. What kind of data would you suggest that this Committee be supplied with before it makes a decision on whether to approve a construction project? Currently, we are given a construction cost figure which is someone's best guess and if we agree with it, we say go ahead and build it.

Answer. Aside from the obvious data regarding need for the facility, impact on the community and a general knowledge of the design, cost considerations—both initial and life cycle—should be available to the Committee.

ACEC believes that, for practical purposes, the program required by the GSA Administrator under Section 4(b)(1) is adequate for Congressional approval of a construction project. This is assuming that the program submitted is based on a comprehensive, objective and accurate assessment of the information collected and maintained by the Administrator pursuant to Section 4(d) of the bill.

To achieve reasonably accurate cost estimates, it is necessary that the design process proceed to a point where estimates of labor and material can be made by qualified estimators. In our view, this can be accomplished only at the end of the design development phase described under the answer to question 2.

TO ESTABLISH CERTAIN PUBLIC BUILDINGS POLICIES FOR THE FEDERAL GOVERNMENT

THURSDAY, NOVEMBER 3, 1983

House of Representatives,
Subcommittee on Public Buildings and Grounds,
Committee on Public Works and Transportation,
Washington, D.C.

The subcommittee met, pursuant to call, at 10 a.m., in room 2261, Rayburn House Office Building, Hon. Robert A. Young (chairman of the subcommittee) presiding.

Mr. Young. The Subcommittee on Public Buildings and Grounds will please come to order.

The subcommittee is meeting today to receive testimony from distinguished officials on all policies of the Public Buildings Service of the General Services Administration, on H.R. 630, a bill to establish public buildings policies for the Federal Government and to establish a Public Buildings Service in the General Services Administration, and to discuss implementation of the Architectural Barriers Act of 1968, as amended.

The subcommittee commenced these hearings last week, and continued hearings earlier this week. Thus far, the subcommittee has received testimony from governmental agencies, the Congressional Budget Office, the General Accounting Office, and the Administrative Office of the Courts, the Chief Judge from the Eastern District of St. Louis, Mo., and outside interests.

As a result of these hearings, I believe the subcommittee has realized that numerous areas not incorporated either within Senate bill 452 or House bill 630 need to be addressed and methods found to resolve problems.

We are pleased to have with us today distinguished officials to present testimony on these matters. I welcome all of the witnesses, and at this time, I will recognize the distinguished ranking minority member of the subcommittee, Mr. Shaw, for an opening statement.

Mr. Shaw.

Mr. Shaw. Thank you, Mr. Chairman.

I, too, would like to welcome today's witnesses. I appreciate their taking the time from their busy schedules to be here today.

Today is the last day of hearings currently scheduled on the Public Buildings Act. I understand today's testimony will be concentrating on the issue of accessibility for the handicapped. I hope today's witnesses can define some of the elusive terminology that pervades this issue.

As always, it is a pleasure to have a representative from the American Institute of Architects. I am delighted that Mr. Vosbeck could return today after his Tuesday scheduling conflict.

I also would like to welcome representatives from the U.S. Conference of Mayors, and, of course, the League of Cities, both organizations of whom I had the pleasure of serving with for many happy years.

These hearings provide a wealth of new information on the issues concerning a new Public Buildings Act. I believe this subcommittee has created a firm new base for future action on this extremely important legislation and would like to commend Chairman Young for scheduling and holding these worthwhile hearings.

Thank you.

Mr. YOUNG. Thank you.

Our first witness will be Mr. Randy Vosbeck, former president of the American Institute of Architects. Mr. Vosbeck, first let me apologize for the subcommittee not being able to receive your testimony on Tuesday as scheduled.

We are pleased that you could come back today to present your testimony, and we look forward to it. Take a seat, and I think we will run over and vote, Mr. Vosbeck, and as soon as we get back, we will try to move through these as rapidly as we possibly can.

The committee will be in recess until after the rollcall.

[Recess.]

Mr. YOUNG. Mr. Vosbeck, Mr. Shaw indicated that we ought to start hearing your testimony and he will be over in just a few minutes.

The full text of your prepared statement will appear in the record at this point.

[Statement referred to follows:]

STATEMENT BY R. RANDALL VOSBECK, FAIA, ON BEHALF OF THE AMERICAN INSTITUTE OF ARCHITECTS

Mr. Chairman, my name is R. Randall Vosbeck, FAIA. I am past president of The American Institute of Architects, the association representing the nation's architectural profession. I am also a practitioner and President of my own firm VVKR, Incorporated in Alexandria, Virginia.

I am appearing today on behalf of the AIA to urge Congressional support for many of the provisions contained in H.R. 630 and to offer the Institute's views on other aspects of the current debate surrounding the reform of the Public Buildings Act. Before I discuss the specifics of H.R. 630 and the AIA's suggestions for improving the Public Buildings Act, I want to stress our belief in the importance of establishing a coherent, rational plan for managing our nation's public buildings. The AIA has worked very closely with the Congress and this subcommittee during the last four years on reform legislation to shape such a federal public buildings program. Our goal has been to achieve a program that will provide a responsible and efficient policy to govern the financing, design and construction of high quality public buildings throughout the country. While these efforts have not yet resulted in passage of a new Public Buildings Act, it appears that the chances for the passage of a new Public Buildings Act have improved during the 98th Congress.

At the outset, I want especially to commend Representatives Levitas, Young, and Shaw for their interest in and dedication toward resolving this issue, and pledge our support for your goals in this legislative area.

H.R. 630

With regard to H.R. 630, we have the following comments on specific sections of the bill:

Section 2 of the bill would authorize the Administrator of GSA to carry out preliminary engineering and design work for the alteration or construction of a public building before Congress actually authorizes the project. We support this change. The effect of the amendment will be to significantly speed up the process with the attendant reduction in construction and operation costs. While there are risks involved (for example, Congress may decide not to authorize a particular project), we think the investment in preliminary design will promote savings in the GSA building program as a whole.

We undestand that a major goal of the legislation is to reduce the government's investment in leased office space. We support Section 3 of H.R. 630 which requires a reduction of the Federal leasing program. While architects design the buildings, whether leased or owned by the Federal Government, we think the trend toward leasing should be reversed. In recent years the Federal government has moved from primarily owner to primarily renter status. Over the long term, economies of ownership outweigh the temporary benefits of leasing. From a design standpoint, leased buildings are often developed on a speculative basis with less concern for quality design, usage and economical life-cycle costs than would be the case if the government were the owner. We think public buildings ought to project both the presence and vitality of the U.S. Government. Ownership would foster this, while leasing does not.

The AIA strongly supports Section 3(a)(2) which would add greater emphasis to the General Services Administration's requirement to preserve buildings of historic, architectural, or cultural significance under Section 102 (a)(1) of the Public Buildings Cooperative Use Act of 1976. As a long-time supporter of the Act and as a leader in the movement to preserve our nation's architectural heritage, and AIA has reacted with disappointment to the lack of widespread implementation by GSA of the Cooperative Use Act. We applaud the language in H.R. 630 which provides more emphasis on enforcement of the 1976 Act. Precedents for preservation and adaptive use by the Federal government are numerous right here in Washington. The restored Old Post Office is an excellent example of the Cooperative Use Act at work. Example of adaptive use can be seen on two sides of Lafayette Square Park with red brick row houses in scale with the Park, the White House and the eighteenth century St. John's Church nearby. Twenty years ago when more office space was needed, the houses were to be torn down and replaced with large, modern structures. Because of President Kennedy's concern, many of the houses were remodeled into handsome offices, utilizing creative architectural adaptive use solutions. The list of additional historic structures preserved for public use includes the Old Executive Office Building, the Renwick Art Museum, the San Francisco Mint, the Wainwright Building in St. Louis, Old Boston City Hall, Pioneer Square in Seattle and many others. Historic preservation is a major priority of our nation's citizens, the Congress and the AIA. Your attention to this concern should be reflected as a major feature of any Public Buildings reform passed by Congress.

While H.R. 630 is clearly an improvement on the current GSA practice of utilizing historic buildings, in accordance with the Cooperative Use Act, the current Senate bill goes even farther. In Title II Section 203 of S. 452, priority is given to reviewing building needs to determine if they can be met through utilizing existing space by renovation or rehabilitation. Of existing public buildings, first priority is given to renovating those of historic, architectural or cultural significance. Further, if public building space is not available, S. 452 gives priority to buildings for acquisition of historic, architectural or cultural significance by the GSA Administrator. These buildings are to be renovated unless use of such space would not prove feasible. S. 452 also requires that priority be given to leasing space in historic structures where leasing is in accordance with the amended act. Although both the House and Senate bills significantly advance federal policy toward greater implementation of the Cooperative Use Act, the Senate bill offers language that we feel strengthens H.R. 630 in this regard.

Section 3(c) of the legislation provides the GSA Administrator with the authority to issue financial obligations for purchase by the Treasury, to the extent authorized in annual appropriation acts, in amounts necessary to finance acquisition or construction of public buildings. The Institute recognizes Congress's dilemma in requesting funds for direct federal construction projects in competition with other budget priorities and attempts to reduce deficit spending. While the GSA three-year purchase contract program has been of some value in eliminating the backlog of unfunded-yet-authorized building purchases, the proposal in H.R. 630 for financing GSA projects in a manner similar to the private sector makes good financial sense.

Although the AIA's main concern with H.R. 630 involves design, we recognize that construction financing is the greatest single problem GSA faces in meeting the demand for federally owned space without leasing. Since the 1972 Public Buildings Amendments established the Federal Buildings Fund, GSA has collected rents for operation, maintenance and acquisition of necessary office space. Since 1975 the fund has provided only $50 million a year for meeting construction needs. In 1979 GSA reported a backlog of approved or pending construction projects totaling $280 million. Today that figure, according to Congressional sources, has escalated to over $500 million. Insufficient financing has led to leasing as the GSA solution—a solution contrary to obvious Congressional sentiment. Unless the Administration is willing to request adequate funding for necessary new public building construction and acquisition projects, no other method to meet the construction goals of Congress is available other than issuing GSA financial instruments. (This proposal is contained in Section 3(c) which amends Section 7 of the Public Buildings Act of 1959 (40 U.S.C. 606).) The nearly $900 million annual bill for GSA leasing is an inefficient use of federal funds which leases lower quality government work space than that available through rehabilitation or new construction.

The Institute supports the amended language, (j)(i) on page 8 of H.R. 630, which requires early and effective consultation between local elected officials and the Agency head concerning GSA decisions to locate or relocate federal agency officers. We also support the requirement that the GSA Administrator give preference to distressed metropolitan areas identified by local officials in redevelopment plans or other appropriate plans. Locating federal facilities with a greater sensitivity to local development and urban design considerations can increase the value of public structures to the community in improving the urban design fabric.

Title IV of S. 452 addresses the issue of mixed and adaptive use of public buildings. With the priority given to historic public buildings in the Public Buildings Program it may be necessary to add House language establishing some form of mixed and adaptive use guidelines. Our nation's architectural treasures should be inviting public places for our citizens as well as the employees that work in them. For this reason, and to make the restoration of historic structures more economical for the federal government, S. 452 should include less restrictive mixed use ratios for historic public buildings. Contrary to the Senate legislation, it is our view that no set ratio of public to commercial/cultural usage should be adopted. Exceptionally expensive and potentially valuable structures should not be excluded from GSA's consideration due to the establishment of low mixed use ratios that undermine the projects' financial viability. The GSA Administrator should be given the discretion to decide appropriate mixed use ratios for each structure with the duty to report to Congress on recommendations.

Section 20 of H.R. 630 establishes within GSA a Public Buildings Service with a Commissioner of Public Buildings appointed by the President. This is a positive policy and administrative development, in our opinion. The further requirement in Section 20(c) mandating, within GSA's Public Buildings Service, a supervising architect appointed by the GSA Administrator correctly acknowledges the value that an architect as a licensed design professional can have in upgrading the design quality of our public structures, whether new or rehabilitated.

The Institute has long appreciated and supported Representative Levitas' efforts to bring high-level architectural experience to all levels of the government's decision-making process for buildings. Architects are trained in the esthetics of our built environment and have historically endeavored to symbolize the values of our culture. Their broad education in the arts and humanities, as well as in technical areas of design and construction, give them the skills necessary to implement a successful federal design program. The appointment of a "supervising architect" at an executive level within GSA will insure that the broad range of esthetic and economic concerns are given full consideration in design decisions and are not overridden by bureaucratic expediency. To insure that this position is held by a person with the appropriate education and background, the Institute strongly supports the bill's current language requiring that the supervising architect position be filled by a qualified licensed architect. Appointing anyone but a licensed architect as the highest ranking design professional in the Executive Branch will undermine the building program's effectiveness and the quality of its results.

As contained in Section 23 of H.R. 630, the AIA applauds the legislation's concern for improving the level of energy efficiency of all public buildings. The architectural profession is more aware than at any time in history of the great need to produce buildings with high energy efficiency. For almost a decade, the AIA has been one of the most outspoken proponents of energy efficiency throughout the built environment. The top priority during my own period as President of the AIA, for example, was improving the energy efficiency of our nation's buildings, especially public buildings. Public structures should set an energy efficient example that can be followed by the rest of the nation.

Nonresidential buildings use about one sixth of our nation's energy. About 450 billion is spent annually to heat and cool these buildings. Many of these are public buildings, a fact of which many of you are painfully aware. The AIA agrees with H.R. 630 that we should address energy efficiency in public buildings since the long-term outlook should be toward new federal construction. What we save today will yield future economic and resource benefits. Over eighty percent of the buildings that exist today will still be here in the year 2000, which is to say that we must be prepared to deal with the energy efficiency of existing building stock as well as new construction.

The potential for improving the energy efficiency of new buildings is staggering. Now, it is possible to design nonresidential buildings that use about ⅓ of the amount of energy that many existing buildings are using today. Only a few years ago, commercial buildings were averaging 110,000–150,000 BTU's per square foot. Some buildings are now using only 50–60,000 BTU's per square foot per year.

Architects are increasingly moving toward a design strategy that deals with the total energy performance of a building rather than mechanical solutions alone. The most dramatic reductions in a building's total energy performance are possible at the earliest stages of design. This is true because early design decisions control a building's form, siting orientation, and use of renewable energy. It is generally at this point, for example, that the decisions to use natural ventilation and daylighting are made. Let me put it this way: If we do not think of energy consciousness at the earliest stages of a project, then we are left only with engineering strategies that are applied at a later, less energy efficient stage of construction. To rely only on conservation and active solar machinery results in less dramatic reductions in the use of energy, and less pleasing buildings, than if passive solar strategies and conservation were used in concert. Clearly, GSA should lead the way in achieving national energy efficiency goals and in significantly reducing government spending on the federal government's $4 billion annual energy bill.

That concludes my supportive remarks on the sections of H.R. 630 which most concern the AIA. At this time, the Institute also wishes to comment on a few of the provisions of S. 452, which is moving through the Senate on its way to this Subcommittee for consideration. By doing so we may assist in the Subcommittee's examination of that legislation.

With that, I will go to the specific sections of S. 452, starting with 103, which contains the qualifications for GSA's supervising architect. We believe those qualifications have not been stated adequately in the Senate bill. As expressed earlier, we also believe that the supervising architect should be a licensed architect. He or she does not necessarily have to have extensive design experience. We do not think that is absolutely essential. But we do think it is essential that this person have an understanding of the design process, of programming costs and budgeting, of construction qualities and of those factors which really contribute to and control design excellence.

The best assurance for obtaining that type of person is to require an education in architecture, experience in professional practice, and licensure as an architect. The Senate bill rejects that notion, and in our opinion, misjudges the actual demands and qualifications necessary for the position.

Regarding Title III of S. 452, which covers design and management of the public buildings, we wonder whether it is really necessary to mandate the use of certain materials (e.g., stained glass) or to require secure locations for bicycles in the body of the legislation. Perhaps these are matters better left to the GSA Administrator's discretion.

Section 306 of the Senate bill establishes strict legislative requirements for a high level of public building maintenance in the areas of appearance, cleanliness and mechanical and structural fitness. While this is a responsibility of the GSA Administrator, recently published reports have produced evidence that a requirement similar to section 306 may be necessary to carry out the wishes of Congress for safe and well maintained public buildings.

On the subject of handicapped access to public buildings, Section 307 of S. 452 speaks to architectural barriers and to the Rehabilitation Act. The AIA supports the use of existing public sector consensus standards, (American National Standards Institute A 117.1) in determining handicapped standards for federal buildings. These standards have been developed in response to the requirements of handicapped persons and are endorsed by such groups as the Easter Seal Foundation and the Center for Barrier Free Environment. AIA endorses the ANSI standards which recognize the need for a barrier free environment through the use of reasonable and realistic guidelines.

However we feel that we must point out our interpretation of the term "fully accessible" as used in Section 307 of this bill. We believe that "fully accessible" could be interpreted to mean that all parts of each building would need to be accessible—that could mean every door, every elevator and lavatory. This could be very costly and perhaps an impossible requirement to attain, especially on remodeled or rehabilitated structures. We believe the legislative definition of the accessibility requirements should be more clearly defined. It would be more appropriate to establish the requirements for assessibility by referencing the Uniform Federal Accessibility Standards, which are now being promulgated by the four standards-setting agencies, DOD, HUD, USPS and GSA or by referencing the American National Standards Institute's accessibility standard A117.1. This would help to reduce the ambiguity that terms such as "fully accessible" inevitably bring about.

The American Institute of Architects has long supported legislative and regulatory concepts of accessibility for the handicapped. We have worked for many years in helping to develop those standards. We believe the Federal accessibility standard should be a uniform standard and should be based on ANSI A117.1-1980. We also believe there should be a simplified procedure for modifications or waivers that could be placed in the hands of the GSA Administrator and passed on to the regional GSA authorities. No standard, obviously, is perfect. Every building project is different, and the waiver modification is an essential part of making those standards work. We think this can be done directly by the GSA Administrator.

The integration of works of art in private and federal buildings is a policy that the Institute has long supported. Title V of the Senate bill presents in elaborate detail methods to improve the architectural and work environment in public buildings. The AIA supports requiring art as an early and integral part of the design process rather than the current GSA art program which is implemented at the Administrator's discretion. The type and location of the art and selection of the artist should be jointly determined by the owner/client and architect. The Institute emphasizes, however, that no procedures should be developed under any art-in-architecture programs that add unreasonable or costly delays to the design and construction process. Further, the AIA supports mandatory application of the public building art programs in this legislation for all government levels for construction or renovation of government facilities.

Our remaining comments concern Title VI, which relates to architectural services.

Section 601 of S. 452 authorizes the Administrator to employ professionally trained design professionals "to prepare . . . plans, drawings and specifications for such public building construction and renovation projects as the Commissioner. . . may designate . . . to enable such employees to utilize their professional skills and training." Presently, the Federal Government has a policy of relying on the private sector to provide needed services. While we believe it is necessary for government design professionals to continue to develop their skills, we hope this section does not envision that many public building projects will be done in-house by government employees. The buildup of large in-house design staffs would be expensive and counterproductive.

We are firmly committed to the employment of highly motivated design professionals within the federal government. However, these architects should be utilized as project administrators to work in concert with outside professionals to insure the complete evolution of a project. In-house staff helps the client (the government) obtain the utmost from private architectural firms. Together they implement a high standard of design. Design professionals and project administrators must enter into a collaborative relationship to insure that an efficient and cost-efficient design process evolves, thus assuring excellence in federal architecture. It is imperative for a strong economy that the government rely upon the private sector.

Section 602 in the Senate bill states that architectural designs not prepared in-house should be procured in accordance with the Brooks Act, P. L. 92-582, and that for a substantial portion of the annual public building construction and renovation projects, "the Administrator shall conduct a design competition among no fewer than three qualified firms." The competitions are to last no more than 60 days and each firm is to prepare only a preliminary design concept. No more than one-half of one percent of the "expected cost of the design and construction of the project" shall be paid in total to all competing firms. Special panels can be convened to help judge the designs and assist in selecting the winning firm.

We do understand and can support competitions for unique projects that are of national or regional significance as we spell out later in our statement. However, we are opposed to design competitions for federal projects in the scale outlined in S. 452.

Enactment of this section as now worded will work to the detriment of small firms competing for federal commissions. More importantly, the expense and time involved in such competitions will be excessive. The best buildings can only result from complete involvement of the client in the exchange of ideas between user, architect/engineer and review boards. We know as design professionals that the good intentions of the Senate sponsors will not be fulfilled.

Congress passed the Architect/Engineer Selection Act, Public Law 92-582, in October 1972. This law established the present method for employing architects and engineers for federal projects. During the debate on P.L. 92-582 the supporters made provisions for design competitions where the additional time, expense and unique nature of the project justified their use. Public Law 92-582 was designed to encourage competition among design professionals and to eliminate favoritism from the selection process. This procedure works well.

The additional time and expense to both the owner and competitor required through competitions means money, a luxury we can ill afford in these times of excessive budget deficits. The tendency of competing firms to exceed allowances in design competitions is prevalent, not only due to an intense desire to obtain the full contract but also to professional pride because a firm wants its proposal to be best for reasons of competitive as well as contract award.

In a 1980 report on a design competition concept, GSA gave a critical review. Citing a typical experience, the report states:

"The total fee paid out by the General Services Administration totaled $138,000 between the three participating A/E firms. In return, the expenditures made by the A/E group were approximately double the amount of the fee that each received. The extended time period presently required for level three necessitates increased administrative costs on the part of GSA as well."

Thus, the total cost of the design competition exceeded the actual cost of the A/E contract. Or, stated another way, the A/E costs for this project were double what one would normally anticipate with no proof that the design was better or that the firm selected was more qualified than the one that would have been chosen through the normal process. And this does not take into account the added building costs incurred by the delay.

Once a building design is selected many buildings costs are practically predetermined. Additionally, the sixty day competition period outlined in S. 452 does not allow enough time for such important costs determinants as:

(A) Is the building energy inefficient?

(An increasingly crucial question.)

(B) Does the design permit an economical structural system?

(C) Is the building located on the site designed to accommodate an efficient foundation system?

(D) From the point-of-view of the life of the building, does the design permit flexibility, encourage expansion, and promote easy and economical maintenance?

While the AIA agrees that design competitions are a valid process for buildings of high architectural significance, we are concerned that S. 452 goes too far beyond that criterion, by also requiring competitions on minor projects of relatively insignificant architectural character. Current procurement law (P.L. 92-582, Section 903) provides for architectural design competitions where most appropriate to meet design, economic and time considerations. The legislative history provides that: In unique situations involving "prestige" projects such as the design of memorials and structures of unusual national significance, when the additional cost justifies the approach, and when time allows, the agency head can rely upon design competition under the recognized procedures that have been traditionally applied to this type of procurement.

In comparison with typical A/E procurement procedures, design competitions are more time consuming, costly and difficult to administer. If a competition is not conducted in accordance with carefully constructed guidelines, the result can be a superficial design that must be redone once the client's needs are properly assessed. It is the Institute's belief that the use of design competitions on buildings that do not have the national or regional architectural significance or the budget to justify this experience procedure is inappropriate, will slow project completion, and will result in an overall economic loss to the public. Where public architectural design competitions are deemed appropriate by law, such competitions should be conducted in accordance with clearly stated, equitable rules. To provide information and guidance in this respect, The American Institute of Architects has published a Handbook of Architectural Design Competitions.

Directly related to the question of when design competitions are appropriate is what compensation should be given to design competitors. The provisions for compensation for participation in design competition under S. 452 are unrelated to the amount of work that would go into a submission. Where competitions are deemed appropriate, design competitors should receive fair compensation as provided for in P.L. 92-582. As currently written, S. 452 provides a level of compensation inadequate to insure the diversity and number of design submissions necessary for a quality competition.

When a building layout, size, shape, location on the site, glass areas, exterior materials, and wall systems are selected through a design competition rather than a thorough evaluation of all these considerations, construction costs are impossible to control. Competitions have their place—for projects of unique national or regional significance—where expense, time for completion and life-cycle costs are not controlling factors. However, design competitions are not a panacea for good design.

For the above reason, we cannot support legislative language similar to that contained in the Senate bill. We question the need for a new law to authorize design competitions. The very fact that competitions are already held from time to time under Public Law 92-582 demonstrates that sufficient authority already exists. Public Law 92-582 acknowledges that design competitions are proper for projects of unique national significance. We strongly urge you to oppose Section 602 when the Senate bill comes before you. In addition, we ask that you support continuance of design competitions as authorized in existing law by adding language to the House bill specifically directing GSA to adhere to the current procurement guidelines contained in P.L. 92-582. The AIA offers the committee its assistance in developing language in support of the current law's efficiency and effectiveness.

In conclusion, the AIA believes that H.R. 630 represents a significant step forward in improving and updating the Public Buildings Act to current needs and realities. We have supported in our testimony the sections that offer promising solutions to current problems in the public buildings program and have suggested alternatives in areas of H.R. 630 where more work is needed. The AIA continues to offer its enthusiastic assistance to this Subcommittee in its attempts to amend the Public Buildings Act of 1959. We appreciate this opportunity to appear before you on this important legislation.

Mr. YOUNG. Please proceed.

TESTIMONY OF RANDY VOSBECK, FORMER PRESIDENT, AMERICAN INSTITUTE OF ARCHITECTS, ACCOMPANIED BY STANLEY E. KOLBE, JR., DIRECTOR, GOVERNMENT AFFAIRS, AMERICAN INSTITUTE OF ARCHITECTS

Mr. VOSBECK. Thank you, Mr. Young. I will summarize my testimony.

I am R. Randall Vosbeck, of AIA. As you indicated, I am a former president of the American Institute of Architects. I am also a practicing architect with my firm in Alexandria, Va.

With me today is Stan Kolbe, director of government affairs for the American Institute of Architects.

As you know, I am appearing today on behalf of the AIA to urge the support for the many provisions contained in H.R. 630, and to offer the AIA's viewpoints on some of the aspects of the bill, and on other aspects of the current debate surrounding the reform of the Public Buildings Act.

We have worked closely with Congress and this subcommittee, for over 6 years now to pass some legislation with regard to the public buildings program, and while these previous efforts have not resulted in the passage of a new Public Buildings Act, we are very hopeful to see that chances for this one are improved and its is on the way toward adoption in the 98th Congress.

At the outset, I would certainly want to commend Representatives Levitas, Young, and Shaw for their interest in and the dedication toward resolving this issue, and to pledge AIA's support for your goals in this legislative area.

With regard to H.R. 630, we do have a few comments on specific sections of the bill: Section 2 of the bill authorizes the Administrator of GSA to carry out preliminary engineering and design for alteration and construction of a public building before Congress actually authorizes a project.

We think this is an excellent change. We support it. The effect of this amendment, we feel, would be to significantly speed up the process with the attendant reduction in construction and operating costs.

We support section 3 of 630, which requires a reduction in the Federal leasing program. Of course, architects design buildings whether they are leased or owned by the Federal Government, but we think the trend toward leasing should be reversed, as it would be more appropriate for the Federal Government to own more of its buildings.

From a design standpoint, leased buildings are often developed on a speculative basis with less concern for quality of design, usage and life-cycle costs than would be the case if the Government were the owner.

AIA strongly supports section 3(a)(2), which would add greater emphasis to GSA's requirement to preserve buildings of historic architectural and cultural significance under section 102(a)(1) of the Public Buildings Cooperative Use Act of 1976.

We have been a long-time supporter of this act, and as leader in the movement to preserve our Nation's architectural heritage, the AIA has been disappointed with the lack of widespread implementation by GSA of the Cooperative Use Act. We applaud the language in H.R. 630 which provides for emphasis on enforcement of the 1976 Act. Historic preservation is a major priority of the AIA, and we think it should be a major priority for Congress and our Nation's citizens as well.

While H.R. 630 is clearly an improvement on the current GSA practice of utilizing historic buildings in accordance with the Cooperative Use Act, we think the current Senate bill goes even farther in the appropriate direction. In title 2, section 203 of S. 452, priority is given to reviewing building needs to determine if they can be met through utilizing existing building space through renovation or rehabilitation.

The House and Senate bill significantly advance Federal policy toward greater implementation of the Cooperative Use Act. The Senate bill, however, offers language that we feel strengthens H.R. 630 in this regard.

Another point, section 3(c) of the legislation provides the GSA Administrator with authority to issue financial obligations in amounts necessary to finance aquisition or construction of public buildings. This proposal in H.R. 630 for financing GSA projects in a manner similar to the private sector makes good financial sense.

We also support the requirement that the GSA Administrator give preference to distressed metropolitan areas identified by local officials in redevelopment plans or other appropriate plans.

Locating Federal facilities with a greater sensitivity to local development and urban designs can increase the value of public structures to the community and improve urban design.

Section 6 of H.R. 630 addresses the issue of mixed and adaptive use of public buildings. With the priority given to historic public buildings in the public buildings program, it may be necessary to add language encouraging less restrictive mixed and adaptive use guidelines in the House bill.

Our Nation's architectural treasures should be inviting public places for our citizens as well as employees that work in them. For this reason, and to make the restoration of historic structures more economical for the Federal Government, H.R. 630 should include less restrictive mixed use ratios for historic public buildings. It is our view that no set ratio of public to commercial cultural usage should be adopted, and that the GSA Administrator should be given the direction to encourage mixed use ratio for each structure, with the duty to report to Congress on these appropriate recommendations.

Section 20 establishes within GSA a Public Buildings Service with a Commissioner of Public Buildings appointed by the President. This is a positive policy and administrative development in our opinion. The further requirement in section 20(c) mandating, within GSA's Public Buildings Service, a supervising architect appointed by the GSA Administrator correctly acknowledges, that the value of the architect as a licensed professional can give in upgrading design quality of our public structures, whether new or rehabilitated.

The appointment of a supervising architect at an executive level within GSA will insure that the broad range of esthetic and economic concerns are given full consideration in design decisions and are not overriden by bureaucratic expediency.

To insure that this position is held by a person with an appropriate education and background, the Institute strongly supports the bill's current language requiring that the supervising architect position be filled by a qualified, licensed architect.

Appointing anyone but a licensed architect, as the ranking design professional in the executive branch, will undermine the buildings program's effectiveness and the quality of its results.

That generally concludes my comments on H.R. 630. I would like to just take another minute or two, if I may, Mr. Chairman, to comment on some of the provisions of the Senate bill 452, because the Senate, as you know, did not hold hearings on the bill.

I believe that bill is moving forward and we would like to pass some of our concerns on to you, so when it reaches you, you will have our thoughts.

I already mentioned the supervising architect position. The Senate bill does not address that the position should be filled by a licensed architect, and I have mentioned how important we feel that is, and we really hope that the House language will survive in any conference between the House and Senate.

Another important aspect of the Senate bill is the provisions on handicapped access. We are very concerned about the phrase in the Senate bill, "fully accessible." We believe that "fully accessible" could be interpreted to mean that all parts of each building would need to be accessible. That could mean every door, every elevator, every lavatory. This could be very costly and perhaps an impossible requirement to attain especially in remodeled and rehabilitated structures.

We believe that legislative definition of accessibility requirements should be more clearly defined. It would be more appropriate to establish the requirements for accessibility by referencing the Uniform Federal Accessibility Standards, which are now being promulgated by the four standards-setting agencies, or by referencing [ANSI] American National Standards Institute's Accessibility Standard A117.1. This would help reduce the ambiguity that terms such as fully accessible inevitably bring about.

Another point about the Senate bill, section 601, authorizes the Administrator to employ professionally trained design professionals to prepare plans, drawings and specifications for such public building construction and renovation projects as the Commissioner may designate.

Presently, the Federal Government has a policy on relying on the private sector to provide most of the design services needed. It is crucial and important that we have qualified design professionals in the public service to be sure, but we hope that this section envisions a change to produce the work in-house with in-house design staffs.

This would be extremely detrimental to the private sector architectural engineering community.

And our last comment on the Senate bill, has to do with design competition. Section 602 of the Senate bill states that architectural designs not prepared in-house should be procured in accordance with the Brooks law (P.L. 92-582). However, for a substantial portion of the annual public building construction and renovation projects, the Administrator shall conduct a design competition among no fewer than three qualified firms.

We do understand and support design competitions for unique projects, for projects with a great deal of prestige, or for projects that are of national or regional significance. However, we feel to select a substantial portion of the public buildings by design competition would be wrong.

Competitions are costly and time-consuming. Congress passed the Architect/Engineer Selection Act, Public Law 92-582, in 1972. This law established the present method of employing architects and engineers for Federal projects. We think this has served the Federal establishment quite well.

During the debate on the Brooks bill, the supporters made provisions for design competitions, where the additional time and expense and unique nature of a project would justify their use.

Public Law 92-582 was structured to encourage competitions among design professionals and to eliminate favoritism from the selection process. This procedure is working well.

Current procurement law—Public Law 92-582, section 903—as I mentioned, does allow for design competitions and we don't believe that a new law is needed. We strongly urge you to oppose this section (602) when S. 452 comes before you for review.

In conclusion, the AIA fully believes that H.R. 630 represents a significant step forward in improving and updating the Public Buildings Act to reflect current needs and realities.

We have worked with you and your staff in the past. We want to continue to do so in the future, and we continue to offer our enthusiastic assistance to the subcommittee's efforts to amend the Public Buildings Act of 1959.

We appreciate this opportunity to appear before you, and I stand ready to answer any questions you might have.

Mr. YOUNG. Thank you, Mr. Vosbeck. Thank you very much.

We have a series of questions that the staff probably would like answered. I think it would be helpful to us.

Mr. VOSBECK. Be happy to.

Mr. YOUNG. The subcommittee received testimony from Mr. Carmen on general policies of GSA, as well as the administration's position on H.R. 630. At the time, Mr. Carmen raised nine questions which he felt needed to be answered prior to amending the Public Buildings Act to meet that end.

He proposed that two special task forces be formed, one from among Members of the House and the Senate, the other including members of the executive branch, and qualified experts from private industry, to examine various practices and offer the best solution possible to address any areas that may warrant our attention.

Would the American Institute of Architects support his proposal? Perhaps you could elaborate on the advantages and disadvantages of such a proposal?

Mr. VOSBECK. Well, we certainly would support and be willing to work with such a task force, and be willing to offer membership to it.

I don't know that a task force is necessarily a substitute, however, for what this subcommittee is setting forth in H.R. 630. I think this Public Buildings Act has been studied for a long time. It does need amending. I don't think necessarily that we need a task force at this time.

I think you have incorporated the necessary changes in your proposed bill. And even though we would be happy to work with the task force and perhaps there could be such contribution made, I can't think of what areas need to be addressed that you haven't already addressed.

Mr. YOUNG. You described for the subcommittee how Prudential Insurance Co. would go about selecting an architect if they were going to construct a building and, second, how the General Services Administration selects an architect, and perhaps you could comment on the advantages and disadvantages of those systems?

Mr. VOSBECK. First of all, Prudential. Why do you pick Prudential.

Mr. YOUNG. I didn't, but somebody did.

Mr. VOSBECK. Prudential—first of all, Prudential would probably identify three to eight firms that they felt were qualified and competent to do the job, and they would probably have a list in their files of firms that they knew or worked with in the past.

They would contact those firms. They would interview them and hear about their qualifications. Then they would select one firm and then negotiate a fee with that selected firm.

Mr. YOUNG. How about GSA?

Mr. VOSBECK. GSA, of course, is a public agency, and so its process is a little more time-consuming. It is important for them to, or they are required, by the Brooks law—Public Law 92-582—to advertise in the Commerce Business Daily, which is somewhat of a time-consuming process.

They receive, then, inquiries from—I would guess on a typical project—30 to 100 firms. Somebody must then go through all of these firms who have expressed interest and narrow it down to five to eight firms for interviews. So there is that extra step that is required by law, and is a good step because we are dealing with a Government agency. Nonetheless, it is a very time-consuming step.

Mr. YOUNG. So maybe some sort of shorter timeframe——

Mr. VOSBECK. If possible, although I can sympathize with the GSA staff that has to weed through the letters of inquiry and forms—254's and 255's—that are submitted by 30 to 100 firms.

Mr. YOUNG. You strongly support the preservation of the historic architectural and cultural buildings by GSA. I believe there is broad support for that provision. However, may I ask you, are you familiar with the Mart Building in St. Louis?

I directed GSA to conduct a study of the building, which is old, to determine if it is cost-effective to renovate the building or to construct a new one in St. Louis to house those agencies.

Are you familiar with that property, and I guess one of the reasons we are asking you that is obviously, I am the chairman from St. Louis, you mentioned one of the buildings that I had quite a bit to do with when I was a member of the Missouri Senate, the Wainwright Building.

We are kind of proud of the renovation that was done. You are familiar with the Wainwright Building?

Mr. VOSBECK. Yes, sir, very familiar.

Mr. YOUNG. Do you know anything about the Mart Building?

Mr. VOSBECK. Not enough to comment on in detail. I think the point there is that the thing that you said that you had asked GSA to do is what we are encouraging to be done, and that is to look at old buildings, to make sure we do a thorough study to try to make them appropriate for reuse and adaptive use.

Mr. YOUNG. The figures we were getting were close to $50 to $60 million for the renovation of the building, which I believe is somewhere around 45 to maybe to 50 years old, and I think we need to do something in an area as big as St. Louis.

Mr. VOSBECK. Well, I can't comment on the specific details of that, Mr. Young.

Mr. YOUNG. Thank you.

Mr. Shaw?

Mr. SHAW. Would you run through the criteria or the usual type of point-by-point process that you go through as an architect doing a building for the private sector versus what you would do as a part of the competition under this particular bill? What I am trying to get to is such things as cost factor, which I think, from the private sector, certainly would be part of the package and specifications, the site location, the type of neighborhood involved.

We will get into this later this morning with people from the League of Cities. What would you know going into a job with private sector versus what would you know going into the competition under this particular bill?

How would you improve the bill in that respect?

Mr. **Vosbeck**. Well, are you talking about as we are trying to be selected to do the job?

Mr. **Shaw**. Obviously, before you got your working drawings, you would know, even the Federal Government would tell you where the building is going to be and some things like that, I would suspect.

Mr. **Vosbeck**. I am unclear whether you are talking about how an architect proceeds with a project once he has been selected to design the project?

Mr. **Shaw**. You are at this point trying to be selected to build a major building for the private sector. I would like you to draw the comparison between that and the competition set forth in this bill. Just tell us what the differences are.

Mr. **Vosbeck**. Of course. The private sector selects architects in a whole variety of ways. Some private sector companies have only one architect they deal with. They call them up on the phone and say, "We have got the next project to proceed with." However, I don't think that is what you are wanting the comparison with.

Many companies have files of firms or know a group of architects they think they can work with. Then they will call in a few of them to talk to about how they would do the job, what the job is like. The architect, on the other hand, will try to find out all he can about that job ahead of time, will visit the site, will know about the infrastructure, and will know about some of the surrounding design problems. So, when he talks to the potential client about doing the job, he can discuss with him intelligently concerning how he would approach the design of the project.

Architects then try to convince the private client that we have the qualifications and the design expertise and have the right chemistry to deal with that client and to really serve him well. We have several face-to-face meetings, oftentimes with the client and the client's representatives.

The typical Brooks law selection provisions go through a similar process, but it is a much more expanded method because it is the public sector. Of course, they have to advertise and let the project be known to the entire architectural engineering community. That is done through the Commerce Business Daily.

These requirements lengthen the process. Also, I think the architect isn't allowed quite as much freedom in dealing with whoever the users of the building are going to be or the client's representatives. Obviously, they can't take the time to talk to 30 to 50 different architects. So that is more restrictive. The process normally unvolves interviews for a short list of firms, and the architect tells the interview panel how to do the job; then selection is made based on the proposal.

Now, the Senate bill, in addition to that type of procedure, which has been working well for the Federal Government, is asking for design competitions. GSA would ask for a group of architects; they would then select a smaller group of architects to actually do a design of a project, to submit it for a nominal fee.

Mr. **Shaw**. At this point, do you have your site location?

Mr. **Vosbeck**. Oh, yes; the Government would have the site location and would say we want to build a new courthouse or a new office building of such a size. They would give us a small amount of the eventual design criteria and the architects would submit actual designs and then a GSA selection would be made on the basis of that rough design.

Mr. **Shaw**. What type of fee is anticipated under the Senate bill for submission?

Mr. **Vosbeck**. For submission of a design competition, I think in the Senate bill, it is one-half of 1 percent. Something like one-half of 1 percent of the estimated construction cost for the design.

Mr. **Shaw**. Is that designing actual floor space, how the walls are located, things like that?

Mr. **Vosbeck**. Yes; I think it envisions that.

Mr. **Shaw**. So, the Federal Government, under the Senate bill, would be actually buying three sets of preliminary drawings?

Mr. **Vosbeck**. Yes, at quite a reduced price, if the only fee they are going to pay is one-half of 1 percent for that design work, because typically architects will spend significantly more than that for the design work.

The precise language is: "The competition is to last no more than 60 days; the firm is to prepare only a preliminary design concept, no more than one-half of 1 percent of the expected cost of design and construction of the project shall be paid to all competing firms." Those are the provisions we really have some problems with, Mr. Shaw.

Design competition tends to drive up the cost of doing business, and that is doing nothing but, in the long run driving up the cost of fees that architects——

Mr. **Shaw**. Is there any impediment other than that one in doing business with the Federal Government that would drive the cost of the fee up for the Federal Government above what it would be dealing with the private sector?

Mr. **Vosbeck**. Drive the cost of the fee up?

Mr. **Shaw**. I am talking about the architectural and engineering fees.

Mr. **Vosbeck**. The primary thing that——

Mr. **Shaw**. What I am trying to get to, every time we turn around, this was a subject of the last hearing which several of the witnesses didn't talk too much about, this particular bill, but they sure vented their frustration as far as GSA was concerned, and we heard some real horror stories of what it was costing.

What I am trying to do at this point is to ferret out what is in this bill that is going to cost the Federal Government more to build buildings.

Mr. **Vosbeck**. I don't think there is anything in the bill as proposed that is going to cost the Federal Government more money, more money than it is spending now.

Mr. **Shaw**. Let's back up.

Mr. **Vosbeck**. Yes; I was going to back up.

I think that typically the Federal Government spends slightly more money than the private sector spends in producing, say, a typical office building, but I am not sure that's bad, because I think the Government gets something for that extra money they spend.

Fees are perhaps slightly higher for the Federal Government than they are the private sector, and one of the reasons is we have to deal with a great many rules and regulations and procedures that often vary from agency to agency, which requires the private practitioner to spend more administrative and management time on a Federal project than a private sector project.

Mr. **SHAW**. The bill itself, I don't think requires us to conform, maybe someone on the staff, maybe you could correct me, does it require us to conform to local building codes?

Mr. **VOSBECK**. I don't think it requires you to do so.

Mr. **SHAW**. I had a very interesting experience which I saw both sides of when I was mayor of Fort Lauderdale. The Federal Government was building an office building. We, as a city, attempted to send our building inspectors in and offered to go over their plans, all at no cost to the Federal Government, when we were under no uncertain terms told to remove ourselves.

We had architects and designers and engineers from out of town that didn't realize you do not dig basements in south Florida. A lot of us in city government were very smug and had a good time watching them pump out the basement and go through all of the other horror stories.

Little did I know at that time that I was soon to be an occupant of that building, which is something I have suffered long and hard for. So my temporary satisfaction at the trials and tribulations that the Federal Government went through was short-lived.

But I think that we should perhaps focus on that. The south Florida Building Code, for instance, is somewhat unique and it is built for the climate and the problems that we do have in south Florida, maybe that is something we as a committee should look at.

Mr. **VOSBECK**. I agree.

Mr. **SHAW**. I think we talk about involving local governments at site selection and things of that nature, but I think that when it can be done without stepping on the immunity of the Federal Government in building buildings as far as local laws are concerned, we should certainly go somewhat towards cooperating with local law enforcement agencies and building departments in this regard.

Mr. **VOSBECK**. I would agree fully on that, Mr. Shaw. The architect frequently is much more familiar with, or should be more familiar with the particular building code of the particular area, and is often more used to dealing with the building code than he is some of the regulations that come out of GSA, for example.

Mr. **SHAW**. Have you seen our Federal building in Fort Lauderdale?

Mr. **VOSBECK**. Yes.

Mr. **SHAW**. I would like to know how that selection was made some day.

Thank you, Mr. Chairman.

Mr. **YOUNG**. That is interesting, because I just happened to write a note, too, as Mr. Shaw just mentioned, I just wonder, back in 1973, with the National Records Center fire in St. Louis, how that worked in with code of this particular city or that fire district.

It was a pretty disasterous thing at the Army Records Center, and I think that maybe we can get both questions asked sometime, how that happened at both places.

Thank you.

Mr. Levitas?

Mr. **Levitas**. Thank you, Mr. Chairman.

Mr. Vosbeck, I noticed from your testimony that AIA's opposition to design competition as proposed by the Senate, and generally, I am sure you are aware of our views in the House that have restricted design competition to projects of national or regional significance.

The idea behind Senator Moynihan's proposal, however, is to try to bring in more innovative design, more creativity, new ideas, and to open opportunities for some of the smaller firms.

In the absence of design competition of the sort they propose, which I do not support—how would you suggest that could be achieved within the framework of GSA at the present time?

Mr. **Vosbeck**. Well, I think you are starting on the right track by suggesting a supervising architect for GSA and a supervising architect who is an architect, not just has the title of architect, and who has some design consciousness so he can appoint appropriate selection, design-oriented selection people within his agency to select architects.

Second, with regard to small firms, I think it is ludicrous to assume that design competitions are going to encourage small firms. If anything, I think it will be just the opposite, because you have to have some financial support to go into a design competition because you are not necessarily assured of much or any fee.

I think the way to encourage small firms into the Federal marketplace is to strengthen some of the set-aside programs and to lower the requirement for--I don't know if you want to go through the small business side, but some way to suggest requirements in the selection process that only firms of X number of people or X number of billings per year qualify for this particular project, and I think that would be a very good way to get small firms into the Federal marketplace.

Mr. **Levitas**. I appreciate your response, and you anticipated the question I had on the subject of the role and the necessity or the value of having a statutory supervising architect designated at GSA.

The last question I have relates to the matter of what type of design do you contemplate would be the result of the design competition? I heard your answer to, I think, Mr. Shaw's question or Mr. Young's question, but, are we not really talking about a concept rather than a final design?

Mr. **Vosbeck**. Well, you are talking about a design concept in the design competition and the winner of the design competition would be employed to carry out the final design.

Mr. **Levitas**. He would not be actually submitting what amounts to a final design as part of his proposal?

Mr. **Vosbeck**. No, he would not. Of course, one of the risks you run, I can't help but comment on design competition for the opera house in Australia that was selected by design competition with a very new, small firm. This result was a beautiful design, but the firm selected had no capability of carrying out the project, and the project was around like 10 times over budget, and 10 years late, they finally got the project and it is a beautiful design, but I don't think it is what was envisioned by the original competition process.

Mr. LEVITAS. Yes, I think that is a very important point. One of the things this legislation would do, quite apart from design concept, is we are going to encourage GSA under this legislation to go through preliminary design before they bring prospectuses to the Congress or come with projects, because right now, when GSA is called upon to provide us with a prospectus, it really shouldn't be in the nonfiction section of the library, it ought to be in the fiction section of the library, because everybody is sitting around with their dream book, thinking, "Gee, how much is this going to cost?"

If we went through site acquisition, preliminary design, and engineering, now we have a realistic ability to assess what the costs are going to be to—both from GSA's point of view and from the congressional point of view.

Mr. VOSBECK. Exactly, and we are very strong in our support of that provision. We think that is a very important provision of this bill.

Mr. LEVITAS. You were being asked questions about: Does this bill cost the Government any more money? My guess is that perhaps that provision will save the Government more money than any other single aspect of a number of features of this legislation that will save money, but that would be probably more than any other one.

Mr. VOSBECK. Yes, sir.

Mr. LEVITAS. One other thing, Mr. Vosbeck, that you said, and I just take this opportunity through you to make the point, the AIA and a number of other organizations have participated over the last 6 years in a discussion of this legislation, in one form or another.

Maybe one day we will see the stacks of testimony and transcripts talking about these issues—I am hopeful that under the leadership of Congressman Young and Congressman Shaw, we will see an early markup of this legislation, move it to the floor and see it enacted into law, at least passed by the House and Senate, because I think this is one of those situations that we have almost studied to death, and without any disrespect to the witnesses we have heard from the last few weeks, or days, and I mean that seriously, without any disrespect, I am still waiting for the next new idea to be put on the table.

I haven't heard it, and I would hope that these hearings will lead to an early passage of this legislation. I thank you and AIA for your contribution.

Mr. VOSBECK. Thank you, Mr. Levitas.

Mr. SHAW. Would the gentlemen yield?

Mr. LEVITAS. Yes, sir.

Mr. SHAW. He has sparked a question in my mind on the preliminary drafts that are sent in on the competition, how accurate would an architect be able to predict the total cost of the building that he is submitting the design for?

Mr. VOSBECK. Well, he should be able to predict perhaps accurately what the project is going to include. Let me say that one of the flaws of design competition is you are attempting to show good design with a little flair and flashiness and frequently the cost considerations are overlooked because architects know it is a design competition and he wants to show good design, and he has a tendency, I think, to oftentimes be unrealistic in whether he can really do this high-quality design within the stated budget.

That is one of the flaws.

Mr. **Shaw**. Perhaps that is one of the things we ought to address. I think your opera house, I saw the opera many, many years ago, it was not on the congressional travel, by the way, and it is quite beautiful, but the horror story of that it is almost an embarrassment to the area because of what they did go through, and I don't think they got the acoustics straightened out yet.

I think it was somewhat of a disaster inside, even today.

Mr. **Vosbeck**. Yes, sir.

Mr. **Shaw**. But it would appear that perhaps that we ought to require the cost factor to be submitted as an estimate together with the design to bring reality to the drawings and also require perhaps in the judging of the design, that those that are in charge of that would also be required to take that into consideration in choosing the drawings.

I readily recognize the value of Federal buildings as a piece of art, and the fact that perhaps it does contain a little different type of structure, it has certain long-lasting value to the community, but the pressing of today's budget, I think, really does impose upon us responsibility to operate within realistic budgets.

Thank you.

Mr. **Young**. Thank you very much, Mr. Shaw.

Mr. Vosbeck, and Mr. Kolbe, thank you very much. I think it has been a very interesting discussion, and I was following what Mr. Levitas was saying about trying to move the bill, so we will see what we can do.

Thank you all very much for coming back this morning.

[Subsequent to the hearing, additional questions were submitted to Mr. Vosbeck by Representative E. Clay Shaw, Jr.. The questions and responses follow:]

THE AMERICAN INSTITUTE OF ARCHITECTS, 1735 NEW YORK AVENUE, N.W.,
Washington, D.C., December 19, 1983.

Hon. CLAY SHAW,
U.S. House of Representatives, Public Works and Transportation Committee, Subcommittee on Public Buildings and Grounds, Rayburn House Office Building, Washington, D.C.

DEAR REPRESENTATIVE SHAW: Attached please find the response to the question you asked during my testimony on the Public Buildings Act. Thank you for your active support in reforming the Act and your commitment to issues of concern to the design and construction industry. Your exceptional work and leadership on the Public Buildings Subcommittee has greatly improved chances for successful passage of a Public Buildings bill in the next session of the 98th Congress.

Sincerely,

R. RANDALL VOSBECK, FAIA,
Past President AIA.

Question. As you are probably aware, the current system of approving construction projects requires the submission of a prospectus specifying the need, size and cost for a new building in the city the building is to be located. When evaluating a construction project, what kind of technical information and data do you feel is essential to have before making a decision to approve the project?

Answer. To improve the value and financial credibility of GSA construction project properties, Congress should recommend in its legislative report language that architects and engineers (A/Es) provide more detailed preliminary designs.

A/Es should verify and improve the prospectus in the area of project program needs, aspects of design, preliminary engineering specifications and overall mechanical and structural elements.

Simply, the more conceptual design work required by GSA the better the cost estimates. At a mimimum, A/Es should be selected in the preliminary design phase to develop far better drawings and specifications than currently required if more credible financial data is to be produced. A list of project items to be examined in a detailed project prospectus includes:

1. Heating, ventilating, air conditioning system (HVAC)—what types?
2. Foundation conditions—are there problems of a special nature?
3. Seismic considerations—special structural problems, costs
4. Off-site utility needs
5. Overall infrastructure quality—needs, associated costs
6. Site elevation improvements—required costs
7. Materials—cost, types, maintenance costs
8. Mechanical system—inherent costs

The AIA recommends that any prospectus include the survey of existing buildings in the project area eligible for meeting space needs through rehabilitation or renovation. Special attention and consideration should be given structures of historic, architectural or cultural significance. In addition, a neighborhood impact study and statement should be included.

The AIA will be pleased to assist your office in developing better prospectus criteria for the legislative report. A/Es can solve many of the problems, which your question implies, in the current prospectus review process. More details are necessary and can be provided if required by Congress and GSA.

Mr. YOUNG. Mr. Robert R. Garvey, Jr., the Executive Director of the Advisory Council on Historic Preservation.

The full text of your prepared statement will appear in the record at this point.

[Statement referred to follows:]

STATEMENT OF ROBERT R. GARVEY, JR., EXECUTIVE DIRECTOR, ADVISORY COUNCIL ON HISTORIC PRESERVATION

The Advisory Council on Historic Preservation is generally charged with advising the President and Congress on matters affecting historic preservation. More specifically with regard to public buildings, the Council has two important statutory duties. First, the Council reviews and comments upon Federal projects that affect historic properties pursuant to Section 106 of the National Historic Preservation Act. This routinely involves the review of proposals by the General Services Administration to construct new Federal buildings and to alter or renovate existing buildings. A second authority was conferred on the Council by the Public Buildings Cooperative Use Act of 1976. Embodied in Sections 601a and 611 of Title 40 in the United Stats Code, this charge requires the Administrator to GSA to seek recommendations from the Council regarding historic properties that may be suitable for meeting Federal space needs. The Administrator is obligated to determine that the use of identified historic buildings is neither feasible nor prudent before proceeding with a prospectus for new construction. We have prepared our views on H.R. 630 drawing on our experience with these authorities.

The wisdom of using historic buildings to meet contemporary office needs has been consistently confirmed over the seven years since the enactment of the Public Buildings Cooperative Use Act. Experience in the private sector, responding to Federal tax incentives, evidences the viability of renovated historic buildings in the commercial office market. Over 2,500 projects, representing a private investment of nearly $2.2 billion, have qualified for Federal historic preservation tax incentives in FY 1983 above. Almost 500 of these were office buildings.

Unfortunately, the Federal government has not kept pace with the private sector. While there have been some notable achievements, such as the rejuvenated Old Post Office on Pennsylvania Avenue, the number of successful projects that have followed the process set out in the public Buildings Cooperative Use Act is extremely small. In fact, we are unaware of any situation where GSA has acquired a historic property recommended by the Council. This is most unfortunate and we would urge the committee to examine ways to rectify this.

From our perspective, the historic preservation provisions have failed to meet the expectations of the framers for three principle reasons. First, budgetary constraints have hindered the Council in preparing recommendations for GSA. Second, it is contrary to any agency decisionmaking process to have an external body exercise a controlling role in the agency's decisions on its fundamental mission. Council involvement in GSA processes regarding the location and design of Federal office buildings presented such a situation. Third, the notion of using historic buildings is not firmly enough embedded in the authorities and policies of GSA to emerge as a priority in the selection of alternative solutions to Federal space needs. Each of these issues requires elaboration.

In the wake of enactment of the Public Building Cooperative Use Act, the Council analyzed the budgetary requirements to meet its obligations. OMB determined that the Council should not seek additional direct appropriations for this activity, but should enter into an agreement with GSA for funding. As a result, the Council received support for an architect, a preservation planner and a secretary, along with money for travel and the production of reports. This amounted to $60,000 the first year and $90,000 for the next two years. After FY 1980 GSA terminated funding and the Council was unable to absorb the function into its existing budget.

The cutoff of funding sharply curtailed the ability of the Council to respond to GSA requests for recommentations. Increasingly, we were compelled to refer GSA directly to the appropriate State Historic Preservation Officer to obtain assistance. As a result, GSA requests have tapered off, so that we are rarely receiving requests for advice. This has the unfortunate consequence of not only frustrating the intent of the statute but also raising questions of the legal adequacy of GSA's compliance with the requirement of Sections 601 a(a)(1) and 611(c).

Even of the program were adequately funded, the second problem we believe would continue to exist. In those cases where the Council identified and recommended historic buildings to meet GSA needs, GSA uniformly determined that the buildings did not meet their needs and none were selected for use. These decisions did not necessarily mean that the buildings recommended were incapable of meeting GSA's needs. Rather, our experience indicates that the external recommendation of buildings to GSA runs against the normal decisionmaking process within that agency for location and design of Federal buildings.

We believe this occurred because the provisions of the Public Buildings Cooperative Use Act did not foster a cooperative, consultative relationship between the Council and GSA. Section 611 requires the Council to identify significant historic buildings that would be suitable for Federal office space. Section 601a requires GSA to meet identified space needs with a "suitable" historic building unless use of the building is determined not to be feasible or prudent. In practice, the Council would scrutinize potentially available historic buildings and assess their "suitability," resulting in a limited number of recommendations. This then left GSA compelled to select one of these or find the use of the recommended buildings infeasible and imprudent. Almost without exception the latter course was followed.

Were the legislation to require that GSA identify suitable historic buildings in consultation with the Council, we believe the likelihood of the successful reuse of historic buildings for Federal offices would be greatly enhanced. Such an arrangement would place the process more squarely within the normal GSA decisionmaking framework, which would be more productive if GSA policies favoring historic preservation were at the same time strengthened.

This leads to the final problem that has surfaced in our experience with the Public Buildings Cooperative Use Act. While there has been substantial improvement since the mid-1970's in GSA's receptivity to using historic buildings, nevertheless we perceived that GSA is institutionally more reluctant and less adept at executing successful historic building rehabilitations than the private sector. The experience of this committee with the Nashville Union Station project bears directly on this point. While it takes a long time to foster widespread acceptance of preservation policies and practices, a conducive climate can speed that process.

It is our view that the legislative framework for providing Federal office space should be revised in a manner that would encourage GSA to develop the necessary expertise and capabilities to carry out the policies of the Public Buildings Cooperative Use Act regarding preferential treatment for historic buildings. While we have not scrutinized this area sufficiently to offer specific recommendations, we would be pleased to work with GSA and the Committee to identify appropriate actions. We note that Section 3(a)(2) of H.R. 630 would require GSA to specifically state to the Congress its reasons for not using historic buildings. This kind of accountability requirement will do much to ensure careful consideration of opportunities to use historic buildings.

In sum, we believe that the policies articulated in the Public Buildings Cooperative Use Act regarding GSA's use of historic buildings are sound. However, we would urge the committee to carefully review the operational realities of the current program and take steps to improve its efficiency. Specifically, we would recommend consideration of the folllowing actions:

Revamping the statutory responsibility to rely on a sound internal GSA system for evaluating and selecting historic buildings for Federal office use, conducted in cooperation with the Council.

Strengthening the policy directives regarding the established preference for using historic buildings, with special attention to ensuring adherence to those policies in actual decisionmaking.

Relying more on established State and local sources of information on historic properties, most notably the State Historic Preservation Officers and local historic preservation commissions.

We believe that H.R. 630 presents the opportunity to refine the program initiated in 1976 to make it a truly integral element of GSA operations.

Mr. **Young**. Please proceed.

TESTIMONY OF ROBERT R. GARVEY, JR., EXECUTIVE DIRECTOR, ADVISORY COUNCIL ON HISTORIC PRESERVATION

Mr. **Garvey**. Thank you, Mr. Chairman, Mr. Shaw.

I am Robert Garvey, Executive Director of the Advisory Council on Historic Council on Historic Preservation, and we appreciate very much this opportunity to appear before you as you consider H.R. 630.

I will indeed summarize my statement.

The Council is generally charged with advising the President and Congress on matters affecting historic preservation. More specifically, with regard to public buildings, the Council has two important statutory duties.

First, the Council reviews and comments upon Federal projects that affect historic properties pursuant to section 106 of the National Historic Preservation Act.

This routinely involves the review of proposals by the General Services Administration to construct new Federal buildings and to alter or renovate existing buildings.

The second authority was conferred on the Council by the Public Buildings Cooperative Use Act of 1976. Embodied in section 601(a) and 611 of title 40 in the United States Code, this charge requires the Administrator of GSA to seek recommendations from the Council regarding historic properties that may be suitable for meeting Federal space needs.

The Administrator is obligated to determine that the use of identified historic buildings is neither feasible nor prudent before proceeding with the prospectus for new construction.

We have prepared our views on H.R. 630 drawing on our experience with these authorities.

The wisdom of using historic buildings to meet contrary office needs has been consistently confirmed over the seven years since the enactment of the Public Buildings Cooperative Use Act. Experience in the private sector, responding to the Federal tax incentives, evidences the viability of renovating historic buildings in the commercial office market.

Over 2,500 projects representing a private investment of nearly $2.2 billion have qualified for Federal historic preservation tax incentives in fiscal year 1983 alone. Almost 500 of these were office buildings.

Unfortunately, the Federal Government has not kept pace with the private sector. While there have been some notable achievements, such as the rejeuvenated Old Post Office on Pennsylvania Avenue, the number of successful projects that have followed the process set out in the Public Buildings Cooperative Use Act is extremely small.

In fact, we are unaware of any situations where GSA has acquired a historic property recommended by the Council. This is most unfortunate, and we would urge the committee to examine ways to rectify this.

From our perspective, the historic preservation provisions have failed to meet the expectations of the framers for three principal reasons: First, budgetary constraints have hindered the Council in preparing recommendations for GSA.

Second, it is contrary to any agency's decisionmaking process to have an external body exercise control in an agency's decisions on its fundamental mission. Council involvement in GSA processes regarding the location and design of Federal office buildings presented such a situation.

Third, the notion of using an historic building is not firmly enough embodied in the authorities and policies of GSA to emerge as a priority in the selection of alternative solutions to Federal space needs.

It is our view that the legislative framework for providing Federal office space should be revised in a manner that would encourage GSA to develop the necessary expertise and capabilities to carry out the policies of the Public Buildings Cooperative Use Act regarding preferential treatment for historic buildings.

While we have not scrutinized this area sufficiently to offer specific recommendations, we would be pleased to work with GSA and the committee to identify appropriate actions.

We note that section 3(a)(2) of H.R. 630 would require GSA to specifically state to the Congress its reasons for using historic buildings. This kind of accountability requirement will do much to insure GSA's careful consideration of opportunities to use historic buildings.

In summary, we believe that the policies articulated in the Public Buildings Cooperative Use Act regarding GSA use of historic buildings are sound. However, we would urge the committee to carefully review the operational realities of the current program, take steps to improve its efficiency.

Specifically, we would recommend consideration of the following actions: Revamping the statutory responsibility to rely on a sound internal GSA system for evaluating and selecting historic buildings for Federal office use, conducted in cooperation with the Council; strengthening the policy directives regarding the established preference for using historic buildings, with special attention to insuring adherence to these policies in the actual process of decisionmaking; relying more on established State and local sources of information, most notably the State Historic Preservation Office and local Historic Preservation Commissions.

We believe that H.R. 630 represents the opportunity to refine the program initiated in 1976 to make it a truly integral element of GSA's operation.

Thank you, Mr. Chairman.

Mr. **Young**. Mr. Garvey, thank you very much for your fine statement.

In your testimony that GSA has never acquired any historic property recommended by the council, in this regard, how many recommendations has the council made to GSA? Where were the buildings located and generally, why do you feel that GSA rejected those recommendations?

Mr. **Garvey**. Mr. Chairman, that is a body of information that I don't have but I will be pleased to supply it for the record.

[The information received from Mr. Garvey follows:]

Over 50 separate recommendations involving hundreds of individual buildings were made to GSA. All of the recommendations were for downtown sites. They were rejected primarily because GSA is still of the attitude that new buildings function better than rehabilitated ones, and rehab is much more difficult to accomplish.

Mr. **Garvey**. I mention the budgetary problems, and let me say that for 3 years after the enactment of the legislation GSA provided some financial assistance. I should put that differently. OMB denied the Council an opportunity to request appropriations for that service to GSA. However, GSA did provide some financial assistance in fiscal year 1978, 1979, and 1980. Subsequent to fiscal year 1980 they have not been able to do that, and consequently, there has been no funding available either in our budget or from their appropriations to make these recommendations.

Mr. **Young**. I am trying to handle this in a nonpartisan nature. This is one of the questions we were going to ask you.

The question says fiscal year 1979. Now we have a different Administration, so I have a real problem. I don't want to make the President mad at me.

Mr. **Shaw**. Both the Democrats and the Republicans beat up on the Carter administration.

Mr. **Young**. So we are going to take a look, a real close look at it and try to send a question over to OMB and see if we can get that question resolved and maybe have them pay a little more attention to how that would be.

Mr. **Garvey**. There was a rather substantial exchange of correspondence on that subject, Mr. Chairman. I presume I can still find it in our archives and if I can, I would be pleased to provide it for the record.

Mr. **Young**. That will be fine.

[The following was submitted for the record by Mr. Garvey:]

General Services Administration,
Public Buildings Service,
Washington, D.C., February 6, 1981.

Mr. Robert R. Garvey, Jr.,
Executive Director, Advisory Council on Historic Preservation, K Street, NW, Washington, D.C.

Dear Mr. Garvey: This is in reference to your December 23 letter to Mr. A. R. Marschall, in which the Advisory Council on Historic Preservation (ACHP) notified us that its services under the Public Buildings Cooperative Use Act (Public Law 94-541) will be terminated effective January 30, 1981.

As you are aware, the Act requires that whenever the General Services Administration undertakes a survey of the public buildings needs of the Federal Government within a geographic area, it shall request that within 60 days the ACHP identify any buildings within such geographic area that (1) are of historic, architectural, or cultural significance and (2) would be suitable, whether or not in need of repair, alteration, or addition, for acquisition or purchase to meet the public buildings needs of the Federal Government. Accordingly, we will continue to request the Advisory Council to identify suitable buildings as mandated by the Act. Further, as in the past, we will also rely on information provided by State Historic Preservation Officers, State and local historic preservation commissions, local historic preservation groups, and the national and regional offices of the National Trust for Historic Preservation.

We trust that the Advisory Council appreciates our position in this matter.

Sincerely,

JAMES G. WHITLOCK,
Assistant Commissioner for Space Management.

DECEMBER 23, 1980.

Mr. A. R. MARSCHALL,
Commissioner, Public Buildings Service, General Services Administration, Washington, D.C.

DEAR MR. MARSCHALL: Your letter of November 26, 1980, declares the termination of the agreement between GSA and the Council for the services of identifying suitable properties under the provisions of the Public Buildings Cooperative Use Act. GSA has provided the Council $60,000 in FY 1978, and $90,000 each for FY 1979 and FY 1980. The Office of Managment and Budget ordained this reimbursable arrangement by denying the council an allowance for Public Buildings, ruling instead that the funds were properly allocated to GSA.

Given the absence of funds appropriated to the Council for this program and your decision that GSA will not fund the activity, we cannot continue to provide these services. Please consider this official notification that the Council's services under PBCUA will be terminated effective January 30, 1981.

Sincerely,

ROBERT R. GARVEY, Jr.

GENERAL SERVICES ADMINISTRATION,
PUBLIC BUILDINGS SERVICE,
Washington, D.C., November 26, 1980.

Mr. ROBERT R. GARVEY, Jr.,
Executive Director, Advisory Council on Historic Preservation, 1522 K Street, NW., Washington, D.C.

DEAR MR. GARVEY: In our letter to you dated Setember 8, 1980, copy enclosed, we stated that the Advisory Council on Historic Preservation (ACHP) should fund for services relating to identification of suitable properties under the provisions of the Public Buildings Cooperative Use Act since the General Services Administration's (GSA) funding involvement for these statutorily-required services were of a temporary nature.

In your letter of September 8, 1980, you stated that $90,000 for fiscal year 1981 would suffice for sustaining the program. Unfortunately, you did not have the benefit of your letter of September 8, 1980, referenced above. However, our letter of December 31, 1979, copy enclosed, in which we stated that the further provision of funds in fiscal year 1981 by GSA would be inappropriate. In our view, as stated in the past, the funding by GSA of these statutorily-required services provided by the ACHP has been a temporary measure and the Advisory Council should fund these activities within its own resources and budgetary process.

Please consider this letter as an official notification of termination of the agreement between the General Services Administration and the Advisory Council on Historic Preservation for fiscal year 1981 and future years.

Sincerely,

A.R. MARSCHALL, *Commissioner.*

Enclosure.

GENERAL SERVICES ADMINISTRATION,
PUBLIC BUILDINGS SERVICE,
Washington, D.C., September 8, 1980.

Mr. ROBERT R. GARVEY, Jr.,
Executive Director, Advisory Council on Historic Preservation, 1522 K Street, N.W., Washington, D.C.

DEAR MR. GARVEY: This is in reference to the funding provided by the General Services Administration (GSA) to the Advisory Council on Historic Preservation

(ACHP) for the services of the Advisory Council relating to the identification of suitable properties under the provisions of the Public Buildings Cooperative Use Act.

While we funded these activities in Fiscal Years 1978, 1979, and 1980, we believe that the further provision of funds in Fiscal Year 1981 by GSA would be inappropriate. In our view, as stated in the past, the funding by GSA of these statutorily required services provided by the ACHP has been a temporary measure and the Advisory Council should fund these activities within its own resources and budgetary process.

In addition, it has come to our attention that the ACHP has yet to request reimbursement on a quarterly basis from GSA for work performed during Fiscal Year 1980. In this regard, if the Advisory Council still intends to seek reimbursement for its services to GSA in Fiscal Year 1980, a Standard Form 1080, Voucher and Schedule for Withdrawal and Credit, with appropriate documentation for services actually performed should be submitted to the Office of Space Management by September 19, 1980. If we do not receive the material by this date, we must regrettably assume that the ACHP has not made obligations against this reservation of funds by GSA. At that time we will be forced to reprogram these funds for other uses.

We trust that the Advisory Council appreciates our position in this matter. We look forward to a continued mutually beneficial working relationship.

Very truly yours,

A.R. MARSCHALL, *Commissioner.*

GENERAL SERVICES ADMINISTRATION,
PUBLIC BUILDINGS SERVICE,
Washington, D.C., December 31, 1983.

Mr. ROBERT R. GARVEY, Jr.,
Executive Director, Advisory Council on Historic Preservation, 1522 K Street, NW., Washington, D.C.

DEAR MR. GARVEY: Based on our Fiscal Year 1980 authorization, the General Services Administration (GSA) will be providing the Advisory Council on Historic Preservation (ACHP) up to $90,000 for activities pursuant to the Memorandum of Understanding between our respective agencies.

We believe that this level of funding represents an adequate amount for the Council to carry out its responsibilities of identifying suitable properties as required by the Public Buildings Cooperative Use Act. As stated in our Memorandum of Understanding, and in numerous meetings between our respective staffs, GSA is of course willing to undertake additional studies that may be necessary in order to further evaluate buildings identified by the ACHP.

In order to transfer FY 1980 funds for the work to be performed by the Council, please submit Standard Form 1081, Voucher and Schedule of Withdrawals and Credits to the Office of Space Management. GSA will reimburse the Council on a quarterly basis.

Regarding FY 1981 funding for the Advisory Council services required by the Public Buildings Cooperative Use Act, we believe that it is appropriate that the Council seek its own funding for these statutorily required services. In our view, the funding by GSA of these ACHP activities has been a temporary measure and we would like to see the Council fund these positions within its own resources and budgetary process.

We look forward to working with the Council in the year ahead.

Very truly yours,

A.R. MARSCHALL, *Commissioner.*

Mr. YOUNG. We have got a little problem in St. Louis. In St. Louis, the building has been designated on the National Register of Historic Place called the A.B. Brown Building. This building houses various groups in the Defense Department. The building is located in a downtown urban redevelopment area and serves as an anchor for the effort by the city of St. Louis and the State of Missouri.

The rent is extremely low, and now GSA wants to move the agency out of the historic building to save maybe 50 cents a square foot. Do you think this is wise—obviously I don't. Would you care to comment on that particular situation? We have wrestled with this with the administrator, the regional administrator out of

Kansas City, and we have not come to any resolving of this question. It didn't seem to me to make much sense in the low amount of what they were paying and now they want to move them out. Is this happening pretty generally?

Mr. **Garvey**. Mr. Chairman, I can't speak to the frequency with which that happens, but I think St. Louis is a town that warrants special attention in a situation of this sort. We have heard about the Wainwright Building, that the State was instrumental in insuring its preservation. The committee might be interested in knowing that there is a system of recognizing internationally important sites and structures, the pyramids, cathedrals, and so forth, called the world heritage program, and the Wainwright Building is a candidate to enter that system because of its excellence. I recall quite readily the days when its retention was seriously in doubt.

Mr. **Young**. They came to the right member of the Missouri Senate for that, I can tell you that.

Mr. **Garvey**. The Post Office in St. Louis was scheduled for demolition and the Administrator of GSA at that time played a key role in insuring that legislation and other devices were brought to bear so that that building stands. St. Louis has an exceedingly high number of downtown office buildings that merit conservation because of the quality of development that went into that gateway city to the West.

There are plans to remove some of these downtown buildings, retaining good buildings, but we have not looked at the A.D. Brown Building. I am not familiar with it as I don't know anything about the cost effectiveness of rental. But the downtown of St. Louis, which has seen a good deal of tax incentive renovation by the private sector, is struggling. It seems to me that it is a proper role of the Federal Government to recognize the work that the State has done in preserving the Wainwright Building and adding facilities around that building for State offices, to recognize the previous efforts on behalf of the Post Office, and finally to join the private sector that is working diligently to retain the character of St. Louis. I think that is what the Cooperative Use Act intended.

Mr. **Young**. I am sorry to say it but there was a court decision and as soon as it looked favorable they did it. I am sure that a lot of people are going to be unhappy about that. But there are other places in this country, older cities—Cleveland, New York, Washington.

Mr. **Garvey**. Well, this act provides our Government an opportunity to match what the private sector is doing, at a very rapid pace. I have to take note of what is going on on Pennsylvania Avenue. It is a more pleasant drive today than it was 12 months ago to come here from the other end of town and that is going to continue to improve. We can do it other places.

Mr. **Young**. We are working very closely with Mr. Haas on preservation, on some of the buildings there in D.C. which I think are pretty important and I am sure we are going to be able to ride herd on that a little better. Maybe we can some other places, too.

Mr. **Garvey**. Fine, thank you.

Mr. **Shaw**. Mr. Garvey, I want to go back to the question of the suggestion submitted to GSA as to the use of historical buildings. Does the Council on Historic Buildings, have a catalog of various areas that could be used by the GSA in determining whether a historic building is suitable for the type of renovation which would lend itself to the required need for Federal office space in that particular area?

Mr. **Garvey**. Your question is two-part. One is the catalog and the other is suitability. The catalog is the easiest one to answer. Simply put, the Council has no such catalog, but relies on the effects of others. The National Register of Historic Places, which is maintained by the Secretary of the Interior, is a listing of buildings that have been found to be significant. That register is incomplete. It has thousands of entries but there are still thousands of buildings that have not been analyzed or studied, simply because there is no real need to and the time hasn't permitted it.

Preservation officers maintain State registers which also contain many listings. Local landmarks commissions have done a great deal of work to single out those buildings that are worthy of preservation and should be or could be retained to enhance or to maintain the character of some urban community. That is the only catalog that is available to the Advisory Council.

There have been several instances very early in the program where GSA asked a question about additional Federal space in a given city. Using the National Register maintained by the Secretary of the Interior and the State registers maintained by State officials and local information, we were able to identify in some cases seven or eight buildings in the neighborhood. Suitability gets to be a whole different question and that I think is one of the real problems that may have been——

Mr. **Shaw**. Let me tell you the direction I am going. Maybe that will help out on a shorthand answer to my question. It appears that if we are truly interested in historic preservation by the Federal Government not only through tax credit but through Federal buildings, to make some movement in that direction, maybe there should be a requirement that GSA at least be required to look at existing buildings suitable for historic preservation for the Federal buildings.

If we use that as a premise, then I think what we need to do is have some type of cataloging, whether it be through your offices, the Department of the Interior or whomever, to maintain some type of a catalog, perhaps by using local government, asking them to make those types of catalogs for us and submit them to us. That information could be presented to GSA almost in the form of a printout, at which time they would not only survey the possible locations when they go down to talk to local government as to location of a particular building but at the same time, I think at very little extra cost to the government, at least survey the buildings that you have submitted to them to see if any of them would lend themselves to preservation or would be available to purchase by the Federal Government and used in that particular way.

I know there have been some horror stories at GSA. I know the question of the Nashville Train Station certainly was a situation whereas I think it is going to have a happy ending, we are going to preserve and keep a very important building for the people of Nashville and I think the entire country, it certainly was not suitable for the need that GSA was looking for at this particular time and that is where we got into a lot of trouble.

I would like to see this particular bill concentrate on preservation when possible. I think that is preserving our heritage. One of the most important things we can possible do, and we are too quick in this country to tear down the old and build something that is of no historical value and never will be of any historical value, and lose a great deal of our history through the modernization or whatever type of label it comes under, it is still an important part.

Once it is gone, it is gone forever and I think that I would like to see us formulate something in this bill that would make use of a catalog of historic areas that might be suitable for Federal use. Would you care to comment on what I have said?

Mr. **Garvey**. Well I think, Mr. Shaw, that was one of the visions we have talked about in conceptual terms this morning. That may have been a conceptual part——

Mr. **Shaw**. AIA is supporting you on that, incidentally.

Mr. **Garvey**. Of course everybody does, and it takes the Federal Government sometimes a little longer to catch up to a popular idea than it does a developer like some that we have got working in this city. There is no question, absolutely no question but that the development, real estate and architectural communities are 100 percent behind the retention and reuse of good sound buildings. It conserves energy. There are so many good reasons. We can no longer be the sort of wasteful society that tears down a whole area of a city in order to put up new buildings. We can't afford to do that without good public interest reasons.

Now, I think the act as initially framed anticipated a catalog being available to GSA through the Council. The question of suitability and some other things that were to be involved in decisions to acquire historic buildings for Federal use, are more in fact GSA in keeping with GSA abilities than they are with an external agency such as the Council.

We work in a cooperative fashion. The Administrator of GSA sits as one of 19 members of the Advisory Council. We work very closely with them. They are our landlord; we occupy space in the Old Post Office, recently renovated. We moved in about 2 months ago and it is marvelous. I wish everybody could come and see what has been done to provide as fine an office space as there is in this city in a building that had been destined for demolition in 1970.

But the act provides the opportunity, with the kind of adjustments which I think I suggested in my testimony, that puts in the hands of GSA responsibilities that now reside in the Council. We can do this on a cooperative basis better than it was originally written in the act and accomplish the same things. If working with your committee staff will be of any benefit we would be pleased to do that.

Mr. **Shaw**. I would like to formulate some language working together with you and GSA to put in this bill so we can get rid of the bulldozer mentality that we seem to have some left over and go forward with historic preservation.

Mr. **Garvey**. We will be pleased to do that, as we have offered in our testimony.

Mr. **Shaw**. Thank you, sir.

Mr. YOUNG. I think maybe we will look at the act again and particularly try to read this, carrying out duties the Administrator shall consult, and I think right in that section it sure seems to be able to promulgate a list that Mr. Shaw indicated. So we will have the staff maybe go over this again and see if we can come up with some thought to maybe write a letter to Mr. Carmen and ask him to pay a little more attention.

Mr. GARVEY Mr. Chairman, let me point out one thing, if I may. We must not anticipate that there can be a catalog that is current for tomorrow's use. We are continually discovering good, sound, and important buildings. It is a fluid, dynamic thing, and I think that is one of the reasons that the original legislation was framed the way it was. We have more access to sort of the day to day developments than someone else might, but that is not an impediment to coming up with a new approach to this or a slightly different approach.

Mr. YOUNG. What do most of the Governors do now as far as your Council is concerned, do they submit——

Mr. GARVEY. Well, Federal agencies have to seek our comments on activities that affect historic buildings. It is in that context that if GSA is planning to add a Federal building in Savannah that has an effect on the historic town plan of Savannah, we comment on that and work very closely with GSA to insure that the new building is the right scale, in the right place, and has the right texture in its materials and so forth.

Each Governor has appointed a State historic preservation officer that has a number of duties. The SHPO's are the ones that submit properties to the Secretary of the Interior for listing on the National Register. They are the people who cooperate with GSA and with us when there are subjects such as how do you put this new Federal building in Savannah without making it intrusive upon the original design of that city. Since we have been unable to be fully responsive to GSA for budgetary reasons, we have sent on a number of occasions their requests for recommendations about buildings to the States, with the anticipation and hope that the State could provide GSA the information requested from the Advisory Council.

So the States are deeply involved. It is my expectation that they will continue to be, maybe to a greater extent than they are as we go forward with programs of federalism that return duties to the States.

Mr. YOUNG. Bridges, too. Do they come under the historic?

Mr. GARVEY. Bridges? Many of them are historic because——

Mr. YOUNG. We have one crossing the Mississippi that is pretty historic. Is that the Advisory Council on Historic Preservation that would have those on file?

Mr. GARVEY. I recently read a report from the State of North Carolina that they had 13,000 bridges and 9,000 of them needed to be replaced. I don't think anybody has a full list of all the bridges in this country that are worthy of preservation because of engineering or other reasons.

There is a bridge replacement program, as many of the old bridges are hazardous. The program is in the Department of Transportation, which is spending a lot of time and money making the bridges in this country safe. In many instances, old bridges cannot be rehabilitated; they are not wide enough, not strong enough, and many are dangerously corroded. We daily look at documentation on some structure that is worthy of preservation, but there is no way to keep it on, so it has to be replaced.

Of course, the Council's role is to confirm those decisions by other Federal agencies that historic properties will have to be lost in circumstances where it is in the interest of public safety. That loss is accepted.

Mr. YOUNG. Thank you very much, Mr. Garvey.

Any further questions?

Mr. SHAW. Thank you very much.

Mr. YOUNG. Thank you very much.

We will now hear from Ms. Plumb, city counselor of the city of Portland, Me., representing the National League of Cities.

You can introduce your partner there and proceed in the manner you would like.

TESTIMONY OF PAMELA PLUMB, CITY COUNCILOR, CITY OF PORTLAND, MAINE, ON BEHALF OF THE NATIONAL LEAGUE OF CITIES; ACCOMPANIED BY REGINALD TODD

Ms. PLUMB. Thank you, Mr. Chairman, I appreciate that. I would be delighted to introduce Reginald Todd, who is here with me as a staff person from the National League of Cities.

Chairman Young, and members of the subcommittee, I am Pamela Plumb, councilor of Portland, Maine. I also serve as vice chair of the Community and Economic Development Policy Committee of the National League of Cities [NLC].

NLC, as you know, represents over 15,000 municipalities through our network of State municipal leagues and over 1,000 direct member cities. I am pleased to be here today to express our views on H.R. 630, legislation to amend the Public Buildings Act of 1959. In addition, I would beg your indulgence to submit for the record a statement on behalf of the U.S. Conference of Mayors.

I also note parenthetically that I listened with pleasure to the previous presentation. Prior to serving as a municipal official, I spent a decade working in historic preservation and was delighted to hear the interest of this committee in that particular aspect of the bill, which I am not here to address as a member of the National League of Cities.

NLC has long had an interest in the indirect, unintended, and often unfortunate impact of direct Federal procurement policies. Federal leasing and construction decisions can either aid in revitalizing an area or hasten its decline. Our concern with Federal city facility siting stems from our advocacy of a national policy of urban conservation that makes the best use of existing urban resources and channels new growth to support, rather than impede, the develoment of our Nation's cities.

NLC worked closely with the General Services Administration and the Carter administration on the development of Executive Order 12072 and subsequent regulations in this field. This order established a national policy of giving preference to central cities or other areas identified by local officials in locating federally owned and leased properties.

As you know, the administration was suspended enforcement of Executive Order 12072, asserting that the order and its implementing regulations "have increased the costs of housing Federal agencies while the benefits of these extra costs are uncertain." NLC strongly disagreed with this conclusion and urged retention and vigorous enforcement of the policy directions contained in Executive Order 12072.

In principle, we welcome H.R. 630 as a vehicle to provide statutory guidelines for Federal facility siting decisions, free from the uncertainties of changing agency regulations and practices. On the other hand, as presently drafted, the bill would significantly retreat from the social and economic policies embodied in Executive Order 12072. Accordingly, we urge the following changes:

Preference to distressed areas. We support the provisions contained in the committee bill requiring GSA to give preference to distressed areas identified by local officials in redevelopment plans in locating or relocating a Federal facility within a metropolitan area. NLC strongly supported provisions of Executive Order 12072 that gave first consideration in Federal facility siting to central business areas of central cities, particularly economically distressed cities or adjacent areas of similar character. We believe this provision ought to be part of H.R. 630.

In a report to the Office of Management and Budget in August 1981 on the implementation of the Executive order, the General Accounting Office found that "siting Federal facilities to aid urban economies as called for by Executive Order 12072 and GSA's implementing regulations, have resulted in some increased Federal costs without clear evidence that local economies subtantially benefited."

Unfortunately, in implementing the order, GSA made no distinction between economically healthy and economically distressed cities. GSA simply directed agencies to locate within central business districts without regard to the particular development needs of the community involved. Because central business areas are usually the most prosperous part of an economically healthy area, GSA's actions often resulted in an increase in Federal leasing costs.

However, in summarizing its findings, the GAO indicated that "we believe that a policy of encouraging Federal agencies to take advantage of opportunities to assist local economies and support local development in meeting Federal space needs can be applied without necessarily increasing costs or adversely affecting agencies' missions."

NLC agrees with the GAO summary of its findings. We remain convinced that these purposes can and should be achieved. It makes no sense for the Federal Government to support targeted revitalization efforts with the community development block grant and urban development action programs or the proposed enterprise zones proposal and then undercut those efforts by dispersing its facilities without taking into account the needs of distressed areas.

If the new Federal facility can be located anywhere in a metropolitan area, first consideration should be given the city with the greatest level of distress. Similarly, where a facility already exists in a distressed area, the impact on the local economy of relocating that facility to another city must be very carefully evaluated.

In the implementation of this provision, unique situations will arise in which location decisions will have to be made on a case by case basis. A host of factors must be weighed in reaching a decision on the location of a Federal facility. No single factor—cost, distress, or agency mission—can be decisive. The critical factor must be in close consultation with the affected city government.

Consultation with local officials. NLC strongly supports the provision of H.R. 630 requiring "early and effective consultation with elected officials" on decisions to locate or relocate a Federal facility in their area. Local officials must receive full dislosure of data on which decisions will be based and be able to make recommendations early enough and at critical points throughout the process. One of NLC's primary concerns with past facility siting policies was that they undercut or ignored local development efforts and weakened the effectiveness of Federal urban revitalization programs. It is essential to link these Federal location decisions with broader local development plans and strategies. This is an area I can't underscore enough. We as local officials, consider ourselves partners with other levels of government. We are serving and drawing our resources from the same people that you are serving and drawing your resources from, and we really must work together if we are going to effect the revitalization necessary in our cities.

In addition, the legislation should provide for appeals by local officials in jurisdictions affected by GSA decisions, as well as for agencies dissatisfied with GSA siting decisions. They should be informed and asked for comments before decisions are made, and allowed a reasonable time for reconsideration. If their recommendations are not accepted, the agency involved should provide a full explanation of the reasons for deciding otherwise.

Availability of housing on a nondiscriminatory basis. NLC has been actively involved in efforts to enact the Fair Housing Amendments of 1983. It makes no sense to strengthen housing discrimination enforcement against an exclusionary community and then turn around and put Federal facilities in such a community.

Locating a Federal facility in a racially exclusionary or discriminating locality has an especially harsh impact on minorities who work or would like to work for the Federal Government. Such a location may effectively deny jobs to minority workers, because of their inability to secure housing reasonably proximate to their jobs and because of the unavailability of mass transportation and the cost of commuting by automobile. We are therefore pleased that the bill requires agencies to consider the availability of housing on a nondiscrimintory basis for Federal employees in connection with their siting decisions.

In conclusion, I would like to emphasize the importance of this legislation to NLC and the Nation's cities. We are pleased to have had the opportunity to express our views on developing a more effective Federal facility siting policy.

If I can answer any questions, or submit answers to you in writing on any questions, we would be happy to help.

Mr. YOUNG. That would be fine. Thank you for a very fine statement.

I certainly agree with your comment that Federal programs within a given city should complement and build upon one another and achieve that end. I believe an effective consultation with the elected officials is necessary. What official would you suggest that that consultation should take place—city managers, the mayor obviously.

Ms. PLUMB. I should think your communications would begin with your chief elected official, the mayor of the city, but it would be important for the mayor and the staff of the community to be involved in that decisionmaking process. Most communities have offices of economic development and planning.

Mr. YOUNG. Do you know, does the GSA consult now with the local officials as to the location or relocation of a government agency in any given area?

Ms. PLUMB. I can speak from my own community. We have been able to work with reasonable success with GSA on facility siting locally. We have, as every community does, a list of horror stories and list of successes in trying to maintain Federal facilities in our inner city and to also maintain them in historic buildings. Our community is 350 years old and an important part of our historic downtown is reuse of those buildings which is quite significant to us.

Mr. YOUNG. In your testimony you state as presently drafted the bill "would significantly retreat from the social and economic policies embodied in Executive Order 12072, which currently has been suspended." Could you elaborate on that particular statement?

Ms. PLUMB. What this really refers to is the fact that the executive order provided very clear preferential treatment for central business districts, CBD's, which is not a part of H.R. 630, and it is that emphasis on locating and staying within the central business district which we are referring to there.

Mr. YOUNG. Mr. Shaw?

Mr. SHAW. Thank you, Mr. Chairman.

I think that H.R. 630 does contain language somewhat different from the Senate language in that H.R. 630 does require the administrator to give preference to distressed areas identified by local officials in redevelopment plans. Then it talks about a number of factors to be taken into consideration. It occurs to me that taking as a given, which I think we all certainly would agree on, that local governmental officials know more about their area than anybody up here, that we should certainly take the local government's ideas into consideration in coming up with a location of a new Federal building.

On the other hand, the Federal Government has the obligation to consider certain things. Obviously, in my area—Fort Lauderdale—we have a great deal of traffic into the social security office. This brings along a whole new set of guidelines, availability of public transportation and things of that nature, accessibility into the building.

You would not want to go into a highly distressed area and put a social security office that was supposed to serve the entire community because of the fear some of the elderly would have to go into those particular areas. There is a whole raft of considerations that have to be used. But I do feel that the Federal Government, when it can, should assist the cities in redevelopment of the central core areas, that is, the distressed areas, if you will, in placement of their building because it can be a catalyst for redevelopment and bringing in new economic opportunities in those particular areas, as well as the employment that that building itself would generate.

It would appear to me, having just said that that perhaps what we should be looking at in this particular bill is giving preference to those areas by the local officials. Allow the local officials to take into consideration what is going to happen in this particular building and then give some guidance to the Federal Government. Particularly one area may be emphasized, the need to put in a distressed area, where in another city they might possibly think that it should be more in a governmental area.

I know in my own city, again going back to that as an example, that we have in the downtown area of Fort Lauderdale the county government seated there as well as the courthouse for the Federal Government. The State office building and city hall are all within walking distance, which makes it very efficient, makes very efficient use of that particular area.

I can remember back when they were coming in for the site selection, that the site in which they put this building was about our last choice. It was interesting to watch how that selection process went forward, the man with the pointer and the map would constantly go back to this particular area where the building finally was put. It was about the City Commission's sixth choice. We were somewhat concerned with redevelopment of our distressed areas, as you had pointed out. I don't know how our impact was digested through the Federal bureaucracy. That was certainly not the choice for the location of the Federal building, even though it happens to be there.

Do you somewhat agree with the remarks that I made as long as we do have the input from the local government, that a Federal building doesn't necessarily have to be located in a distressed area, particularly when we are talking about the entire country?

Ms. PLUMB. I guess my reaction to your comments would be that I certainly would wholeheartedly agree with your comments about the consultation that is necessary with local officials. It has to be clear what the local development plans are and how this would or would not impact them. I think it is important to have some language which says specifically that there is an interest from the Federal Government in using the siting of Federal buildings to be parallel with the Federal Government's interest in the preservation and redevelopment of urban centers, and I do think it is important to strengthen it to that extent.

Understanding that there is nothing in the language or even in what we would propose about providing some priority consideration for inner cities, that would make that preemptive. Clearly in any decisions, as this legislation makes clear, there are a host of factors that have to be considered. The service that is being provided—your social security example—and a variety of other considerations. So that we are certainly not looking for a preemptive clause that would say no matter what else happens in all of the other categories, it has to go into the inner city.

There certainly should be language that indicates a policy of the Federal Government to parallel the siting of Federal buildings with their policies for the redevelopment of distressed urban core areas.

Mr. **SHAW**. I think that is a good statement. Of course, we have to also recognize that the inner cities are quite different in your older cities than your new cities.

Thank you, Mr. Chairman.

Ms. **PLUMB**. Thank you.

Mr. **YOUNG**. Thank you.

Mr. Clarke.

Mr. **CLARKE**. Thank you, Mr. Chairman.

We appreciate your good statement. There has been much debate regarding the location of Federal facilities in areas like downtown Washington, as opposed to locating an agency 30 miles outside of the city where many of the employees who work for the particular agency live.

Could you comment on this generally as it applies across the country?

Ms. **PLUMB**. It would seem to me that certainly one of the criteria you are going to be looking at is the service that is being provided by the people who are in the Federal building and in that Federal agency, and that you are not only going to be considering where your employees live and the proximity of that to the site, but what service are being provided. If they all live 30 miles out of the city but the clients they are serving are from the inner city, siting of it close to the site of the employees may not be necessarily the best decision.

What we are talking about is the impact on development plans in the inner cities, and clearly there will be a dramatic impact on the development plan of an inner city if the siting of the Federal building chooses to follow a residential movement to the suburbs because that will only exacerbate the drawing out of development throughout the region and the ultimate demise of an inner city.

Mr. **CLARKE**. I think that those are very good points.

I will follow up with one final question. In testimony received by the subcommittee last week from the Administrator of the GSA, Mr. Gerald Carmen, he asked the following question to the subcommittee, and I am quoting. Mr. Carmen said: "Should government officials be located in expensive downtown areas of our Nation's cities or should we require agencies to relocate to less expensive quarters?"

Perhaps you have already answered on that. Could you comment on it?

Ms. **PLUMB**. Certainly. There clearly has been a long debate on the cost of locating Federal facilities downtown, as to whether or not that is more expensive. What we are urging is that there be some consideration not just to the cost per square foot of where that agency is located, but the cost to the community if it is not located there. I think you need to balance those things clearly. Sometimes what may best suit the bottom line of a particular Federal agency may not in the long run best suit the bottom line of a Federal policy, and I think you have to make that comparison and you have to look at that when you are looking at the siting.

Mr. **SHAW**. Would you yield?

Mr. **Clarke**. Yes.

Mr. **Shaw**. I think what we are hearing is a piece of a much larger story, and it is one that is constantly on the agenda of the cities of this country, and that is what we are going to do about the dying cities. The questions is whether or not we are going to allow the office buildings to also leave the downtown and actually leave the center core of the city. That is really a war zone. That is going to spell disaster for the future of this country.

I think that is what Ms. Plumb is very concerned about. That is what the League of Cities is concerned about. That is what the mayors are concerned about, and that is what all America better be concerned about. Our cities are in a world of trouble.

Mr. **Clarke**. Thank you very much.

I yield back the balance of my time.

Mr. **Young**. Thank you very much, Mr. Clarke.

Ms. Plumb, and Mr. Todd, we appreciate your testimony before the subcommittee and we will incorporate into the record the statement of the Conference of Mayors.

[Statement referred to follows:]

STATEMENT OF THE U.S. CONFERENCE OF MAYORS ON H.R. 630—PUBLIC BUILDINGS ACT AMENDMENTS OF 1983

Mr. Chairman, distinguished members of the Committee, we appreciate this opportunity to share our views with you on H.R. 630, the Public Buildings Act Amendments of 1983, on behalf of the members of the U.S. Conference of Mayors. The Conference of Mayors is a membership organization representing cities with populations of 30,000 or more.

We would like to comment specifically on two provisions of H.R. 630. First, we strongly support the provisions of Section 3(j) (1) requiring "early and effective consultation with local elected officials" about the location of federal office facilities. We also support this section's preference for locating federal offices in distressed areas of cities. Obviously, the requirements of different federal facilities can have an impact on the location within a metropolitan area. In some instances, it is likely that locating some facilities in distressed areas would be inappropriate. In this regard, the provisions of Section 3(j) (1) (A–D) offer a reasonable series of tests for determining this. Overall, we believe the most important facet of this provision is the requirement to consult with local officials. Using federal investment to complement local development plans is sound national policy. We support it strongly.

The second concern we wish to share with you involves Section 4, the required inventory of federal buildings. We would suggest adding language in subsection (a)(1) to require the report to include information on the current value of each building. This would not be an onerous requirement, and could help resolve a longstanding conflict over Payments in Lieu of Taxes (PILOT) between the federal and local government. The generation of such information would significantly update the basis on which PILOT is now distributed. This has been a continuing source of controversy in cities with significant amounts of federally-owned property. These payments now are based on the value of the property at the time of acquisition or improvement. Obviously, in many locations, value has escalated but the payments to local governments have not. At a time when other forms of federal support are being cut back and local government are being asked to shoulder an increasing share of the service burden for local citizens, we believe it is appropriate to suggest that GSA estimate the current value of it properties as a first step towards a more equitable PILOT system.

Once again, thank you for the opportunity to share our views with you on this important subject. We look forward to working with you as the bill moves forward.

[Subsequent to the hearing, additional questions were submitted to the National League of Cities by Representative E. Clay Shaw, Jr. The questions and responses follow:]

NATIONAL LEAGUE OF CITIES,
Washington, D.C., February 21, 1984.

Mr. JOHN F. SMOLKO, Jr.,
Professional Staff Member, Subcommittee on Public Buildings and Grounds, Committee on Public Works and Transportation, House of Representatives, Rayburn House Office Building, Washington, D.C.

DEAR MR. SMOLKO: The attached comments are in response to your request for answers to supplemental questions regarding Councilor Pamela Plumb's testimony on H.R. 630—the Public Buildings Act of 1983.

I hope you find this information helpful. If you have further questions or concerns please contact me.

Sincerely,

REGINALD TODD,
Legislative Counsel, Office of Federal Relations.

Attachments.

1. We do not believe there is any inconsistency in our statement supporting preference to central business areas of central cities and our criticism of GSA's implementation of Executive Order 12072.

GSA's blanket application of the central business area preference did not take into consideraion whether a city was distressed. Our statement on page 2 states, "NLC strongly supported provisions of Executive Order 12072 that gave first consideration in federal facility siting to central business areas (CBAS) of cities, particularly economically distressed cities or adjacent areas of similar character". Because GSA did not make the distinction between economically healthy and economically distressed cities, its actions often increased federal leasing costs by locating facilities in the more properous and vibrant commercial area of economically healthy cities where costs are generally high.

2. The National League of Cities advocates a national policy of urban conservation. "Urban conservation" means that urban resources must be maintained and improved and that new urban growth must be channeled so that it supports—rather than undercuts or competes with—existing useful development.

NLC's urban conservation policy supports our position of giving preference to central business areas of distressed cities in the location of federal facilities. This approach is consistent with public policy under other federal programs that support targeted revitalization efforts such as the Community Development Block Grant and Urban Development Action Grant programs and the proposed enterprise zone legislation. If the population to be served finds the location of the agency to be inconvenient, that is one of the factors to be weighed during consultations between the agency and local officials.

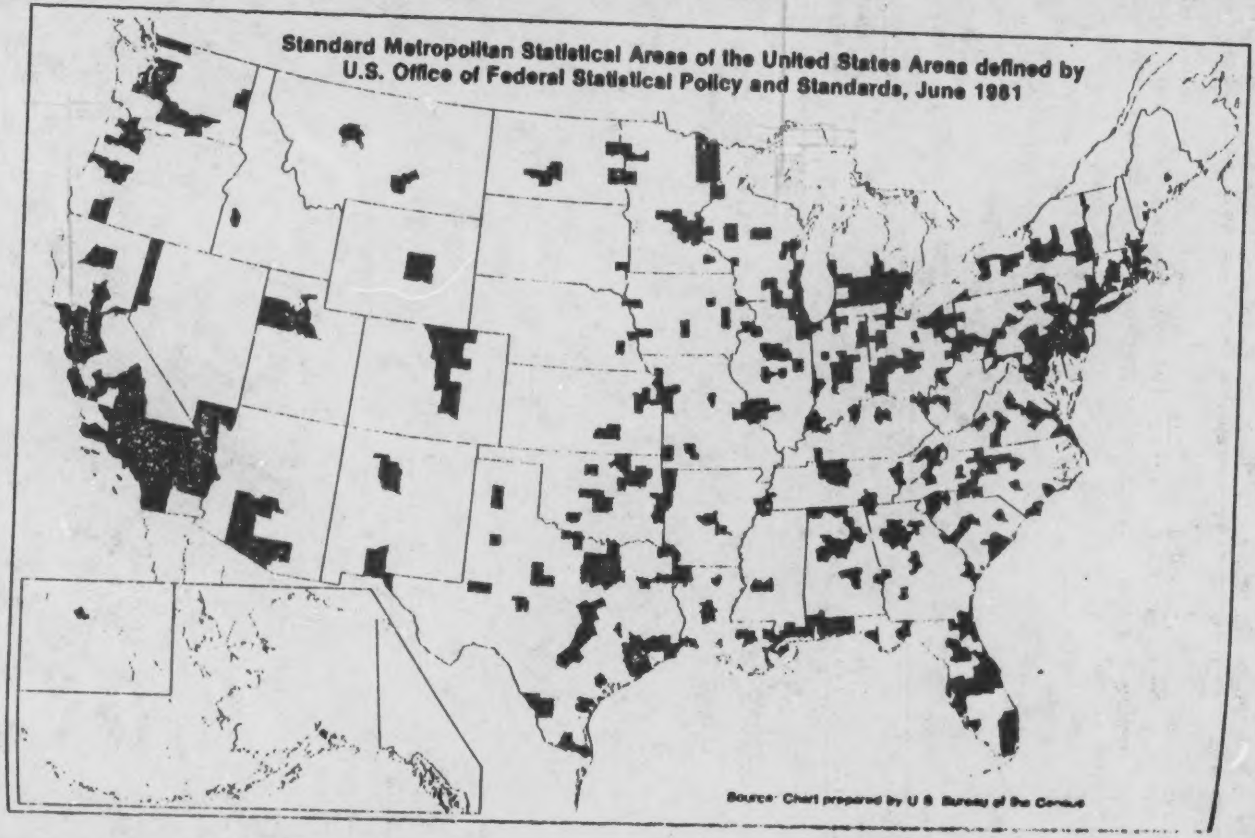
3. The first sentence on page 4 means that a metropolitan area is comprised of several cities. As defined by the Office of Management and Budget (OMB), "the general concept of a metropolitan area is one of a large population nucleus, together with adjacent communities which have a high degree of economic and social integration with that nuclear."

In making decisions on federal facility siting, the city with the greatest level of distress should be given first consideration within that metropolitan area. I have enclosed an excerpt from the Statistical Abstract of the United States 1982-1983, U.S. Department of Commerce, Bureau of Census, which defines metropolitan areas and includes examples.

4. Over much of the past two decades, there has been a significant migration of federal offices from central cities to suburbs, accompanying and reenforcing the parallel movement of private business and industry. Our support for a preference for central business areas of distressed communities is intended to help reverse this trend, to contribute to the revitalization of hard pressed cities, and to encourage the return (or at least discourage the departure) of private business. Especially in a time of budget restraint, this is an efficient use of federal resources in the interest of urban revitalization and improved employment opportunities in areas of greatest need.

Preference for such areas, would be given first consideration, not sole consideration. As indicated in our testimony, numerous other factors, including agency mission and cost must be weighed. The critical factor is consultation with local officials. This approach would retain priority to cities, but would also allow the federal government to seek sites that are more appropriate than those in a central business area.

Executive Order 12072, provided this flexibility. At Section 1-103, it instructed GSA to "give first consideration to a centralized community business area and adjacent areas of similar character, including other specific areas which may be recommended by local officials."



Standard Metropolitan Statistical Areas of the United States Areas defined by U.S. Office of Federal Statistical Policy and Standards, June 1981

Source: Chart prepared by U.S. Bureau of the Census

APPENDIX II

Metropolitan Area Concepts and Components

Statistics for metropolitan areas shown in the *Statistical Abstract* represent areas designated by the U.S. Office of Management and Budget (OMB) as standard metropolitan statistical areas (SMSA's). Definitions of the SMSA's in terms of their geographic components are presented in Office of Management and Budget (OMB), *Standard Metropolitan Statistical Areas*, 1975, Revised Edition; *Statistical Reporter*, October 1981 issue; and the *Federal Register*, January 3, 1980 (part 6) "Official Standards Followed in Establishing Metropolitan Statistical Areas." OMB issues amendments to update this information when changes in SMSA definitions are made.

The list of areas, their components, and population totals, which follows (see p. 898), refers to the SMSA definitions in effect on June 30, 1981. On that date, there were 323 SMSA's (including 5 in Puerto Rico). The figures in tables A, B, and C below (see p. 896), exclude the 5 areas in Puerto Rico.

The general concept of a metropolitan area is one of a large population nucleus, together with adjacent communities which have a high degree of economic and social integration with that nucleus. Standard definitions of metropolitan statistical areas were first issued by the then Bureau of the Budget (predecessor of OMB) in 1949, under the designation "Standard Metropolitan Areas"; the present designation was adopted in 1959. From 1977 to 1981, the SMSA's were the responsibility of the Office of Federal Statistical Policy and Standards, Department of Commerce.

The criteria for the establishment and definition of SMSA's were modified in 1958, 1971, and 1975. The current standards were adopted in January 1980; they provide that each SMSA must include at least:

(a) One city with 50,000 or more inhabitants, or

(b) A Census Bureau-defined urbanized area of at least 50,000 inhabitants and a total SMSA population of at least 100,000 (75,000 in New England).

The standards provide that the SMSA include as "central county(ies)" the county in which the central city is located, and adjacent counties, if any, with at least 50 percent of their population in the urbanized area. Additional "outlying counties" are included if they meet specified requirements of commuting to the central counties and of metropolitan character (such as population density and percent urban). In New England the SMSA's are defined in terms of cities and towns rather than counties.

The standards adopted in 1980 were used to define a group of 36 new SMSA's in June 1981; the Rapid City, S. Dak. SMSA was abolished at that time. The boundaries of these and the other SMSA's that existed on January 1, 1980 will be reviewed under the new standards after 1980 commuting data become available, beginning in 1982.

Revised 1980 standards for determining central cities and titles will be implemented as part of the 1982 review. Meanwhile, following the pre-1980 criteria, the largest city in each SMSA is designated a "central city"; in addition there may be up to two additional central cities if specified requirements are met. With two exceptions the title of each SMSA consists of the name(s) of its central city(ies) and the name of each State into which the SMSA extends (the Nassau-Suffolk, NY SMSA has no central cities; the central cities of the Northeast Pennsylvania SMSA are Scranton, Wilkes-Barre, and Hazleton). An SMSA may include other cities of 50,000 or more besides its central cities.

In 1982 the second edition of the *State and Metropolitan Area Data Book* was released. This publication presents a variety of statistical information for SMSA's and their component counties, reflecting the 1981 definitions of SMSA's.

New England SMSA's and NECMA's. Because SMSA's in New England are defined in terms of cities and towns, rather than counties, some statistical data that are available only for counties cannot be compiled for individual New England SMSA's. Therefore, for New England areas, data are shown for both New England County Metropolitan Areas (NECMA's) and SMSA's wherever possible. The NECMA's provide a county version of the New England areas defined following criteria identical to those used to define SMSA's in the other States. NECMA's do not replace New England SMSA's as the standard areas.

Standard Consolidated Statistical Areas.—Standard consolidated statistical areas (SCSA's), defined under criteria adopted by OMB in August 1975 and revised in January 1980, include two or more contiguous SMSA's which meet certain criteria of size, urban character, integration, and contiguity of urbanized areas.

Effect of changes in SMSA definition.—Changes in the definitions of SMSA's since 1940 have consisted chiefly of (1) the recognition of new areas as, for example, cities reached 50,000 population; and (2) the addition of counties (or towns in New England) to existing SMSA's as new census data showed them to qualify. Also, several formerly separate SMSA's have been merged, and occasionally territory has been transferred from one SMSA to another or (in rare instances) from an SMSA to nonmetropolitan territory. Comparisons of SMSA figures over time may be affected in cases where the SMSA definitions were changed. To maintain comparability, data for an earlier period have been revised in this volume where possible, to reflect the SMSA boundaries of the more recent period. However, this could not always be done; for data based on a sample survey, in particular, it is usually not possible to revise the data to reflect changes in SMSA definitions that occurred after the survey was made.

In the three tables that follow, data are given for SMSA's as defined for specified dates, thereby indicating the extent of change in population and land area resulting from revisions in definitions.

TABLE A. NUMBER, POPULATION, AND LAND AREA OF SMSA'S AS DEFINED AT SPECIFIED DATES: 1940 TO 1980

[The differences in population shown here for each year in the successive columns of the table result entirely from net expansion of metropolitan territory through changes in the SMSA definitions. The differences in population shown for each SMSA definition (on the successive lines of the table) result entirely from population changes within that territory, unaffected by changes in SMSA definitions. The changes in 1970 land area result entirely from net expansion of SMSA territory. All data include Alaska and Hawaii and exclude Puerto Rico. Subtraction of any line of the table from the line below will show the net effect of changes in population and land area undergone by the SMSA's as the result of changes in definitions between the specified dates. Such changes typically occurred throughout the period, not on any single date, and may have included subtractions from, as well as additions to, SMSA territory. Census population data for 1970 include corrections made since publication. The area data for the 1950 and 1960 census definitions of SMSA's differ from the data published in those censuses because they are based on a remeasurement of land areas made during the 1960's, and also reflect changes in inland water area occurring up to 1970]

SMSA DEFINITION AS OF—	Number of SMSA's	POPULATION					Land area, 1970 (sq. mi)
		1940, Apr. 1	1950, Apr. 1	1960, Apr. 1	1970, Apr. 1	1980, Apr. 1	
1950 census (Mar. 1952)	169	[1]69,534,737	[2]84,853,700	106,344,548	122,184,836	128,839,422	[illegible]
1960 census (Nov. 1960)	212	[3]72,844,551	89,316,903	[4]112,885,139	130,982,661	140,793,427	[illegible]
1964 (Aug. 31)[5]	217	74,869,415	91,644,188	115,876,343	134,700,913	145,503,863	[illegible]
1968 (Jan. 31)[6]	230	76,408,154	93,629,966	118,413,604	137,976,254	149,811,057	[illegible]
1970 census (Feb. 28, 1971)	243	77,154,871	94,579,006	[7]119,593,496	[8]139,479,806	151,662,221	[9][illegible]
1974 (Apr. 30)[10]	265	[11]82,037,746	[12]100,219,707	[13]126,613,710	148,196,993	162,753,335	[illegible]
1977 (Dec. 31)[14]	277	82,804,912	101,109,145	127,674,818	149,482,864	164,383,496	[illegible]
1980 census (June 30, 1981)	318	85,398,406	104,172,853	131,318,714	153,693,767	169,430,623	[15][illegible]

[1] Corresponds to total 1940 population for 1950 SMSA's published in 1950 census (69,279,675), with addition of Honolulu SMSA, and corrected by subtracting population (3,194) of Colonial Heights town erroneously included in Richmond SMSA. [2] Corresponds to total SMSA population for 1950 published in 1950 census (84,500,680) plus Honolulu SMSA. [3] Corresponds to total 1940 population for 1960 SMSA's published in 1960 census (72,834,468), corrected by adding population (13,277) erroneously omitted from Stamford SMSA (remainder of Stamford town), and subtracting population (3,194) of Colonial Heights town erroneously included in Richmond SMSA. [4] Corresponds to total SMSA population for 1960 published in 1960 census (112,885,178), corrected by subtracting population (39) erroneously included in Franklin County, Ohio (Columbus SMSA). [5] SMSA's as defined for the 1963 economic censuses. [6] SMSA's as defined for the 1967 economic censuses. [7] Corresponds to total 1960 population for 1970 SMSA's published in 1970 census (119,594,754), corrected by subtracting 1,256 population from Lawrence-Haverhill SMSA; this represented an addition to the 1960 population of Andover town made subsequent to the original census tabulations, and therefore not reflected in State or national totals. [8] Corresponds to total SMSA population for 1970 published in 1970 census (139,418,811), plus net corrections made subsequent to publication. [9] Corresponds to total SMSA land area published in 1970 census (387,616 square miles), corrected by subtracting 15 square miles erroneously included in Roanoke SMSA and 3 square miles included due to erroneous addition of area data. [10] SMSA's as defined for the 1972 economic censuses. [11] Includes estimated 1939 population (4,429) of Anchorage Census Division, as defined in 1970. [12] Includes estimated 1950 population (32,060) of Anchorage Census Division, as defined in 1970. [13] Includes 1960 population (82,833) of Anchorage Census Division, as defined in 1970. [14] SMSA's as defined for the 1977 economic censuses. [15] Land area, 1980.

Source: U.S. Bureau of the Census, 1940–1970, *U.S. Census of Population*, vol. 1 and *1980 Census of Population*, vol. 1, parts A and B.

TABLE B. NONMETROPOLITAN POPULATION AND LAND AREA AT SPECIFIED DATES: 1940 TO 1980

[See headnote for table A, p. 896. Nonmetropolitan population and land area are equivalent to that portion of the total national population and land area not included within SMSA's at the dates specified]

NONMETROPOLITAN POPULATION AS OF—	POPULATION					Land area, 1970 (sq. mi.)
	1940, Apr. 1	1950, Apr. 1	1960, Apr. 1	1970, Apr. 1	1980, Apr. 1	
1950 census (Mar. 1952)	62,629,832	66,472,098	72,978,627	81,117,195	97,706,383	3,329,400
1960 census (Nov. 1960)	59,320,018	62,008,895	66,438,036	72,319,370	85,752,378	3,227,196
1964 (Aug. 31)	57,295,154	59,681,610	63,446,832	68,601,118	81,041,942	3,187,298
1968 (Jan. 31)	55,756,415	57,695,812	60,909,571	65,325,777	76,734,748	3,158,533
1970 census (Feb. 28, 1971)	55,009,698	56,746,790	59,729,677	63,822,223	74,883,584	3,149,257
1974 (Apr. 30)	50,126,823	51,016,091	52,709,465	55,103,038	63,792,470	3,045,760
1977 (Dec. 31)	49,359,657	50,216,653	51,648,357	53,819,367	62,162,309	3,026,410
1980 census (June 30, 1981)	46,786,163	47,152,945	48,004,461	49,608,254	57,115,182	[1]2,973,142

[1] Land area, 1980.

Source: U.S. Bureau of the Census, 1940–1970, *U.S. Census of Population*, vol. 1; *1980 Census of Population*, vol. 1, parts A and B.

TABLE C. PERCENT OF TOTAL U.S. POPULATION AND PERCENT OF LAND AREA INSIDE SMSA'S AS DEFINED AT SPECIFIED DATES: 1940 TO 1980

[See headnote for table A, p. 896]

PERCENT AS OF—	PERCENT OF POPULATION					Land area, 1970
	1940, Apr. 1	1950, Apr. 1	1960, Apr. 1	1970, Apr. 1	1980, Apr. 1	
1950 census (Mar. 1952)	52.6	56.1	59.3	60.1	56.9	5.9
1960 census (Nov. 1960)	55.1	59.0	63.0	64.4	62.2	8.8
1964 (Aug. 31)	56.6	60.6	64.6	66.3	64.2	9.9
1968 (Jan. 31)	57.8	61.9	66.0	67.9	66.1	10.7
1970 census (Feb. 28, 1971)	58.4	62.5	66.7	68.6	67.0	11.0
1974 (Apr. 30)	62.1	66.2	70.6	72.9	71.8	13.9
1977 (Dec. 31)	62.7	66.8	71.2	73.5	72.6	14.4
1980 census (June 30, 1981)	64.6	68.8	73.2	75.6	74.8	[1]16.0

[1] Land area, 1980.

Source: U.S. Bureau of the Census, 1940–1970, *U.S. Census of Population*, vol. 1; *1980 Census of Population*, vol. 1, parts A and B.

APPENDIX II

Standard Metropolitan Statistical Areas as of June 30, 1981

	1980 Population [1] (1,000)
Abilene, Tex	139
Callahan County	11
Jones County	17
Taylor County	111
Akron, Ohio	660
Portage County	136
Summit County	524
Albany, Ga	113
Dougherty County	101
Lee County	12
Albany-Schenectady-Troy, N.Y	795
Albany County	286
Montgomery County	53
Rensselaer County	152
Saratoga County	154
Schenectady County	150
Albuquerque, N. Mex	454
Bernalillo County	420
Sandoval County	35
Alexandria, La	152
Grant Parish	17
Rapides Parish	135
Allentown-Bethlehem-Easton Pa.-N.J	635
Carbon County, Pa	53
Lehigh County, Pa	272
Northampton County, Pa	225
Warren County, N.J	84
Altoona, Pa	137
Blair County	137
Amarillo, Tex	174
Potter County	99
Randall County	75
Anaheim-Santa Ana-Garden Grove, Calif	1,933
Orange County	1,933
Anchorage, Alaska	174
Anchorage Borough	174
Anderson, Ind	139
Madison County	139
Anderson, S.C	133
Anderson County	133
Ann Arbor, Mich	265
Washtenaw County	265
Anniston, Ala	120
Calhoun County	120
Appleton-Oshkosh, Wis	291
Calumet County	31
Outagamie County	129
Winnebago County	132
Asheville, N.C	178
Buncombe County	161
Madison County	17
Athens, Ga	[illegible]
Clarke County	74
Jackson County	25
Madison County	18
Oconee County	12

	1980 Population [1] (1,000)
Atlanta, Ga	2,030
Butts County	14
Cherokee County	52
Clayton County	150
Cobb County	298
De Kalb County	483
Douglas County	55
Fayette County	29
Forsyth County	28
Fulton County	590
Gwinnett County	167
Henry County	36
Newton County	34
Paulding County	26
Rockdale County	37
Walton County	31
Atlantic City, N.J	194
Atlantic County	194
Augusta, Ga.-S.C	327
Columbia County, Ga	40
Richmond County, Ga	182
Aiken County, S.C	106
Austin, Tex	537
Hays County	41
Travis County	420
Williamson County	77
Bakersfield, Calif	403
Kern County	403
Baltimore, Md	2,174
Baltimore city	787
Anne Arundel County	371
Baltimore County	656
Carroll County	96
Harford County	146
Howard County	119
Bangor, Maine	84
Penobscot County (pt.)	81
Waldo County (pt.)	3
Baton Rouge, La	494
Ascension Parish	50
East Baton Rouge Parish	366
Livingston Parish	59
West Baton Rouge Parish	19
Battle Creek, Mich	187
Barry County	46
Calhoun County	142
Bay City, Mich	120
Bay County	120
Beaumont-Port Arthur-Orange, Tex	375
Hardin County	41
Jefferson County	251
Orange County	84
Bellingham, Wash	107
Whatcom County	107
Benton Harbor, Mich	171
Berrien County	171
Billings, Mont	108
Yellowstone County	108
Biloxi-Gulfport, Miss	192
Hancock County	25
Harrison County	158
Stone County	10

	1980 Population (1,000)
Binghamton, N.Y.-Pa	[illegible]
Broome County, N.Y	[illegible]
Tioga County, N.Y	[illegible]
Susquehanna County, Pa	[illegible]
Birmingham, Ala	[illegible]
Jefferson County	[illegible]
St. Clair County	[illegible]
Shelby County	[illegible]
Walker County	[illegible]
Bismarck, N.D	[illegible]
Burleigh County	[illegible]
Morton County	[illegible]
Bloomington, Ind	[illegible]
Monroe County	[illegible]
Bloomington-Normal, Ill	119
McLean County	119
Boise City, Idaho	173
Ada County	173
Boston, Mass	[illegible]
Essex County (pt.)	[illegible]
Middlesex County (pt.)	[illegible]
Norfolk County (pt.)	[illegible]
Plymouth County (pt.)	[illegible]
Suffolk County	[illegible]
Bradenton, Fla	148
Manatee County	148
Bremerton, Wash	147
Kitsap County	[illegible]
Bridgeport, Conn	[illegible]
Fairfield County (pt.)	[illegible]
New Haven County (pt.)	[illegible]
Bristol, Conn	74
Hartford County (pt.)	[illegible]
Litchfield County (pt.)	[illegible]
Brockton, Mass	[illegible]
Bristol County (pt.)	17
Norfolk County (pt.)	5
Plymouth County (pt.)	[illegible]
Brownsville-Harlingen-San Benito, Tex	[illegible]
Cameron County	[illegible]
Bryan-College Station, Tex	94
Brazos County	94
Buffalo, N.Y	1,243
Erie County	1,015
Niagara County	[illegible]
Burlington, N.C	99
Alamance County	99
Burlington, Vt	114
Chittenden County (pt.)	[illegible]
Franklin County (pt.)	3
Grand Isle County (pt.)	1
Canton, Ohio	404
Carroll County	26
Stark County	379
Casper, Wyo	72
Natrona County	72
Cedar Rapids, Iowa	170
Linn County	170

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[1] As of April 1, 1980. Source: U.S. Bureau of the Census, *1980 Census of Population*, vol. 1, parts A and B.

	1980 Population[1] (1,000)
Champaign-Urbana-Rantoul, Ill	168
Champaign County	168
Charleston-North Charleston, S.C	430
Berkeley County	95
Charleston County	277
Dorchester County	59
Charleston, W.Va	270
Kanawha County	231
Putnam County	38
Charlotte-Gastonia, N.C	637
Gaston County	163
Mecklenburg County	404
Union County	70
Charlottesville, Va	114
Albemarle County	56
Fluvanna County	10
Greene County	8
Charlottesville city	40
Chattanooga, Tenn.-Ga	427
Hamilton County, Tenn	288
Marion County, Tenn	24
Sequatchie County, Tenn	9
Catoosa County, Ga	37
Dade County, Ga	12
Walker County, Ga	56
Chicago, Ill	7,104
Cook County	5,254
Du Page County	659
Kane County	278
Lake County	440
McHenry County	148
Will County	324
Chico, Calif	144
Butte County	144
Cincinnati, Ohio-Ky.-Ind	1,401
Clermont County, Ohio	129
Hamilton County, Ohio	873
Warren County, Ohio	99
Boone County, Ky	46
Campbell County, Ky	83
Kenton County, Ky	137
Dearborn County, Ind	34
Clarksville-Hopkinsville, Tenn.-Ky	150
Montgomery County, Tenn	83
Christian County, Ky	67
Cleveland, Ohio	1,899
Cuyahoga County	1,498
Geauga County	74
Lake County	213
Medina County	113
Colorado Springs, Colo	317
El Paso County	309
Teller County	8
Columbia, Mo	100
Boone County	100
Columbia, S.C	410
Lexington County	140
Richland County	270
Columbus, Ga.-Ala	239
Chattahoochee County, Ga	22
Muscogee County, Ga	170
Russell County, Ala	47
Columbus, Ohio	1,093
Delaware County	54
Fairfield County	94
Franklin County	869
Madison County	33
Pickaway County	44

	1980 Population[1] (1,000)
Corpus Christi, Tex	326
Nueces County	268
San Patricio County	58
Cumberland, Md.-W. Va	108
Allegany County, Md	81
Mineral County, W. Va	27
Dallas-Forth Worth, Tex	2,975
Collin County	145
Dallas County	1,557
Denton County	143
Ellis County	60
Hood County	18
Johnson County	68
Kaufman County	39
Parker County	45
Rockwall County	15
Tarrant County	861
Wise County	27
Danbury, Conn	146
Fairfield County (pt.)	127
Litchfield County (pt.)	19
Danville, Va	112
Pittsylvania County	66
Danville city	46
Davenport-Rock Island-Moline, Iowa-Ill	384
Scott County, Iowa	160
Henry County, Ill	58
Rock Island County, Ill	166
Dayton, Ohio	830
Greene County	130
Miami County	90
Montgomery County	572
Preble County	38
Daytona Beach, Fla	259
Volusia County	259
Decatur, Ill	131
Macon County	131
Denver-Boulder, Colo	1,621
Adams County	246
Arapahoe County	294
Boulder County	190
Denver County	492
Douglas County	25
Gilpin County	2
Jefferson County	372
Des Moines, Iowa	338
Polk County	303
Warren County	35
Detroit, Mich	4,353
Lapeer County	70
Livingston County	100
Macomb County	695
Oakland County	1,012
St. Clair County	139
Wayne County	2,338
Dubuque, Iowa	94
Dubuque County	94
Duluth-Superior, Minn.-Wis	267
St. Louis County, Minn	222
Douglas County, Wis	44
Durham, N.C. (See Raleigh-Durham SMSA.)	
Eau Claire, Wis	131
Chippewa County	52
Eau Claire County	79
El Paso, Tex	480
El Paso County	480

	1980 Population[1] (1,000)
Elkhart, Ind	137
Elkhart County	137
Elmira, N.Y	98
Chemung County	98
Enid, Okla	63
Garfield County	63
Erie, Pa	280
Erie County	280
Eugene-Springfield, Oreg	275
Lane County	275
Evansville, Ind.-Ky	309
Gibson County, Ind	33
Posey County, Ind	26
Vanderburgh County, Ind	168
Warrick County, Ind	41
Henderson County, Ky	41
Fall River, Mass.-R.I	177
Bristol County, Mass. (pt.)	146
Newport County, R.I. (pt.)	31
Fargo-Moorhead, N. Dak.-Minn	138
Cass County, N. Dak	88
Clay County, Minn	49
Fayetteville, N.C	247
Cumberland County	247
Fayetteville-Springdale, Ark	179
Benton County	78
Washington County	100
Fitchburg-Leominster, Mass	100
Middlesex County (pt.)	12
Worcester County (pt.)	88
Flint, Mich	522
Genesee County	450
Shiawassee County	71
Florence, Ala	135
Colbert County	55
Lauderdale County	81
Florence, S.C	110
Florence County	110
Fort Collins, Colo	149
Larimer County	149
Fort Lauderdale-Hollywood, Fla	1,018
Broward County	1,018
Fort Meyers-Cape Coral, Fla	205
Lee County	205
Fort Smith, Ark.-Okla	204
Crawford County, Ark	37
Sebastian County, Ark	95
Le Flore County, Okla	41
Sequoyah County, Okla	31
Fort Walton Beach, Fla	110
Okaloosa County	110
Fort Wayne, Ind	383
Adams County	30
Allen County	294
De Kalb County	34
Wells County	25
Fort Worth, Tex. (See Dallas-Fort Worth SMSA.)	
Fresno, Calif	515
Fresno County	515

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[1] As of April 1, 1980. Source: U.S. Bureau of the Census, *1980 Census of Population*, vol. 1, parts A and B.

	1980 Population[1] (1,000)
Gadsden, Ala	103
Etowah County	103
Gainesville, Fla	151
Alachua County	151
Galveston-Texas City, Tex	196
Galveston County	196
Gary-Hammond-East Chicago, Ind	643
Lake County	523
Porter County	120
Gastonia, N.C. (See Charlotte-Gastonia SMSA.)	
Glens Falls, N.Y	110
Warren County	55
Washington County	55
Grand Forks, N.Dak.-Minn	101
Grand Forks County, N.Dak	66
Polk County, Minn	35
Grand Rapids, Mich	602
Kent County	445
Ottawa County	157
Great Falls, Mont	81
Cascade County	81
Greeley, Colo	123
Weld County	123
Green Bay, Wis	175
Brown County	175
Greensboro-Winston-Salem-High Point, N.C	827
Davidson County	113
Forsyth County	244
Guilford County	317
Randolph County	92
Stokes County	33
Yadkin County	28
Greenville-Spartanburg, S.C	569
Greenville County	286
Pickens County	79
Spartanburg County	202
Hagerstown, Md	113
Washington County	113
Hamilton-Middletown, Ohio	259
Butler County	259
Harrisburg, Pa	447
Cumberland County	179
Dauphin County	232
Perry County	36
Hartford, Conn	726
Hartford County (pt.)	601
Litchfield County (pt.)	5
Middlesex County (pt.)	27
New London County (pt.)	8
Tolland County (pt.)	85
Hickory, N.C	130
Alexander County	25
Catawba County	105
Honolulu, Hawaii	763
Honolulu County	763
Houston, Tex	2,905
Brazoria County	170
Fort Bend County	131
Harris County	2,410
Liberty County	47
Montgomery County	128
Waller County	20

	1980 Population[1] (1,000)
Huntington-Ashland, W.Va.-Ky.-Ohio	311
Cabell County, W.Va	107
Wayne County, W.Va	46
Boyd County, Ky	56
Greenup County, Ky	39
Lawrence County, Ohio	64
Huntsville, Ala	309
Limestone County	46
Madison County	197
Marshall County	66
Indianapolis, Ind	1,167
Boone County	36
Hamilton County	82
Hancock County	44
Hendricks County	70
Johnson County	77
Marion County	765
Morgan County	52
Shelby County	40
Iowa City, Iowa	82
Johnson County	82
Jackson, Mich	151
Jackson County	151
Jackson, Miss	320
Hinds County	251
Rankin County	69
Jacksonville, Fla	738
Baker County	15
Clay County	67
Duval County	571
Nassau County	33
St. Johns County	51
Jacksonville, N.C	113
Onslow County	113
Janesville-Beloit, Wis	139
Rock County	139
Jersey City, N.J	557
Hudson County	557
Johnson City-Kingsport-Bristol, Tenn.-Va	434
Carter County, Tenn	50
Hawkins County, Tenn	44
Sullivan County, Tenn	144
Unicoi County, Tenn	16
Washington County, Tenn	89
Bristol city, Va	19
Scott County, Va	25
Washington County, Va	46
Johnstown, Pa	265
Cambria County	183
Somerset County	81
Joplin, Mo	128
Jasper County	87
Newton County	41
Kalamazoo-Portage, Mich	279
Kalamazoo County	212
Van Buren County	67
Kankakee, Ill	103
Kankakee County	103
Kansas City, Mo.-Kans	1,327
Cass County, Mo	51
Clay County, Mo	136
Jackson County, Mo	629
Platte County, Mo	46
Ray County, Mo	21
Johnson County, Kans	270
Wyandotte County, Kans	172
Kenosha, Wis	123
Kenosha County	123

	[illegible]
Killeen-Temple, Tex	[illegible]
Bell County	[illegible]
Coryell County	[illegible]
Knoxville, Tenn	[illegible]
Anderson County	[illegible]
Blount County	[illegible]
Knox County	[illegible]
Union County	[illegible]
Kokomo, Ind	[illegible]
Howard County	[illegible]
Tipton County	[illegible]
La Crosse, Wis	[illegible]
La Crosse County	[illegible]
Lafayette, La	[illegible]
Lafayette Parish	[illegible]
Lafayette-West Lafayette, Ind	122
Tippecanoe County	[illegible]
Lake Charles, La	167
Calcasieu Parish	167
Lakeland-Winter Haven, Fla	322
Polk County	322
Lancaster, Pa	362
Lancaster County	362
Lansing-East Lansing, Mich	[illegible]
Clinton County	[illegible]
Eaton County	[illegible]
Ingham County	275
Ionia County	[illegible]
Laredo, Tex	[illegible]
Webb County	[illegible]
Las Cruces, N.M	96
Dona Ana County	96
Las Vegas, Nev	[illegible]
Clark County	463
Lawrence, Kans	[illegible]
Douglas County	[illegible]
Lawrence-Haverhill, Mass.-N.H	282
Essex County, Mass. (pt.)	231
Rockingham County, N.H. (pt.)	51
Lawton, Okla	112
Commanche County	112
Lewiston-Auburn, Maine	72
Androscoggin County (pt.)	72
Lexington-Fayette, Ky	318
Bourbon County	19
Clark County	28
Fayette County	204
Jessamine County	26
Scott County	22
Woodford County	18
Lima, Ohio	218
Allen County	112
Auglaize County	43
Putnam County	33
Van Wert County	30
Lincoln, Nebr	193
Lancaster County	193
Little Rock-North Little Rock, Ark	394
Pulaski County	341
Saline County	53

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[1] As of April 1, 1980. Source: U.S. Bureau of the Census. *1980 Census of Population*, vol. 1, parts A and B.

	1980 Population [1] (1,000)
Long Branch-Asbury Park, N.J	503
Monmouth County	503
Longview-Marshall, Tex	152
Gregg County	99
Harrison County	52
Lorain-Elyria, Ohio	275
Lorain County	275
Los Angeles-Long Beach, Calif	7,478
Los Angeles County	7,478
Louisville, Ky.-Ind	906
Bullitt County, Ky	43
Jefferson County, Ky	685
Oldham County, Ky	28
Clark County, Ind	89
Floyd County, Ind	61
Lowell, Mass.-N.H	233
Middlesex County, Mass	225
Hillsborough County, N.H	8
Lubbock, Tex	212
Lubbock County	212
Lynchburg, Va	153
Lynchburg city	67
Amherst County	29
Appomattox County	12
Campbell County	45
Macon, Ga	254
Bibb County	150
Houston County	78
Jones County	17
Twiggs County	9
Madison, Wis	324
Dane County	324
Manchester, N.H	161
Hillsborough County (pt.)	112
Merrimack County (pt.)	17
Rockingham County (pt.)	32
Mansfield, Ohio	131
Richland County	131
McAllen-Pharr-Edinburg, Tex	283
Hidalgo County	283
Medford, Oreg	132
Jackson County	132
Melbourne-Titusville-Cocoa, Fla	273
Brevard County	273
Memphis, Tenn.-Ark.-Miss	913
Shelby County, Tenn	777
Tipton County, Tenn	33
Crittenden County, Ark	49
De Soto County, Miss	54
Meriden, Conn	57
New Haven County (pt.)	57
Miami, Fla	1,626
Dade County	1,626
Midland, Tex	83
Midland County	83
Milwaukee, Wis	1,397
Milwaukee County	965
Ozaukee County	67
Washington County	85
Waukesha County	280
Minneapolis-St. Paul, Minn.-Wis	2,114
Anoka County, Minn	196
Carver County, Minn	37
Chisago County, Minn	26
Dakota County, Minn	194
Hennepin County, Minn	941
Ramsey County, Minn	460
Scott County, Minn	44
Washington County, Minn	114
Wright County, Minn	59
St. Croix County, Wis	44
Mobile, Ala	443
Baldwin County	78
Mobile County	365
Modesto, Calif	266
Stanislaus County	266
Monroe, La	139
Ouachita Parish	139
Montgomery, Ala	273
Autauga County	32
Elmore County	43
Montgomery County	197
Muncie, Ind	129
Delaware County	129
Muskegon-Norton Shores Muskegon Heights, Mich	180
Muskegon County	158
Oceana County	22
Nashua, N.H	114
Hillsborough County (pt.)	114
Nashville-Davidson, Tenn	851
Cheatham County	22
Davidson County	478
Dickson County	30
Robertson County	37
Rutherford County	84
Sumner County	86
Williamson County	58
Wilson County	56
Nassau-Suffolk, N.Y	2,606
Nassau County	1,322
Suffolk County	1,284
New Bedford, Mass	169
Bristol County (pt.)	154
Plymouth County (pt.)	15
New Britain, Conn	142
Hartford County (pt.)	142
New Brunswick-Perth Amboy-Sayreville, N.J	596
Middlesex County	596
New Haven-West Haven, Conn-R.I	418
Middlesex County (pt.)	11
New Haven County (pt.)	406
New London-Norwich, Conn	249
Middlesex County, Conn. (pt.)	9
New London County, Conn. (pt.)	214
Washington County, R.I. (pt.)	25
New Orleans, La	1,187
Jefferson Parish	455
Orleans Parish	558
St. Bernard Parish	64
St. Tammany Parish	111
New York, N.Y.-N.J	9,120
New York City, N.Y	7,071
Bronx County, N.Y	1,169
Kings County, N.Y	2,231
New York County, N.Y	1,428
Queens County, N.Y	1,891
Richmond County, N.Y	352
Putnam County, N.Y	77
Rockland County, N.Y	260
Westchester County, N.Y	867
Bergen County, N.J	845
Newark, N.J	1,966
Essex County	851
Morris County	409
Somerset County	203
Union County	504
Newark, Ohio	121
Licking County	121
Newburgh-Middletown, N.Y	260
Orange County	260
Newport News-Hampton, Va	364
Hampton city	123
Newport News city	145
Poquoson city [2]	9
Williamsburg city	10
Gloucester County	20
James City County	23
York County [2]	35
Norfolk-Virginia Beach-Portsmouth, Va.-N.C	807
Chesapeake city, Va	114
Norfolk city, Va	267
Portsmouth city, Va	105
Suffolk city, Va	48
Virginia Beach city, Va	262
Currituck County, N.C	11
Northeast Pennsylvania	640
Lackawanna County	228
Luzerne County	343
Monroe County	69
Norwalk, Conn	127
Fairfield County (pt.)	127
Ocala, Fla	122
Marion County	122
Odessa, Tex	115
Ector County	115
Ogden, Utah (See Salt Lake City SMSA.)	
Oklahoma City, Okla	834
Canadian County	56
Cleveland County	133
McClain County	20
Oklahoma County	569
Pottawatomie County	55
Olympia, Wash	124
Thurston County	124
Omaha, Nebr.-Iowa	570
Douglas County, Nebr	398
Sarpy County, Nebr	86
Pottawattamie County, Iowa	87
Orlando, Fla	700
Orange County	471
Osceola County	49
Seminole County	180
Owensboro, Ky	86
Daviess County	86
Oxnard-Simi Valley-Ventura, Calif	529
Ventura County	529

[1] As of April 1, 1980. Source: U.S. Bureau of the Census, *1980 Census of Population*, vol. 1, parts A and B.

[2] Poquoson city became independent of York County in 1975.

	1980 Population [1] (1,000)
Panama City, Fla	98
Bay County	98
Parkersburg-Marietta, W.Va.-Ohio	163
Wirt County, W.Va	5
Wood County, W.Va	94
Washington County, Ohio	64
Pascagoula-Moss Point, Miss	118
Jackson County	118
Paterson-Clifton-Passaic, N.J	448
Passaic County	448
Pensacola, Fla	290
Escambia County	234
Santa Rosa County	56
Peoria, Ill	366
Peoria County	200
Tazewell County	132
Woodford County	33
Petersburg-Colonial Heights-Hopewell, Va	129
Colonial Heights city	17
Hopewell city	23
Petersburg city	41
Dinwiddie County	23
Prince George County	26
Philadelphia, Pa.-N.J	4,717
Bucks County, Pa	479
Chester County, Pa	317
Delaware County, Pa	555
Montgomery County, Pa	644
Philadelphia County, Pa	1,688
Burlington County, N.J	363
Camden County, N.J	472
Gloucester County, N.J	200
Phoenix, Ariz	1,509
Maricopa County	1,509
Pine Bluff, Ark	91
Jefferson County	91
Pittsburgh, Pa	2,264
Allegheny County	1,450
Beaver County	204
Washington County	217
Westmoreland County	392
Pittsfield, Mass	91
Berkshire County (pt.)	91
Portland, Maine	184
Cumberland County (pt.)	164
York County (pt.)	19
Portland, Oreg.-Wash	1,243
Clackamas County, Oreg	242
Multnomah County, Oreg	563
Washington County, Oreg	246
Clark County, Wash	192
Portsmouth-Dover-Rochester, N.H.-Maine	164
Rockingham County, N.H. (pt.)	54
Strafford County, N.H. (pt.)	79
York County, Maine (pt.)	31
Poughkeepsie, N.Y	245
Dutchess County	245
Providence-Warwick-Pawtucket, R.I.-Mass	919
Bristol County, R.I. (pt.)	47
Kent County, R.I. (pt.)	151
Newport County, R.I. (pt.)	4
Providence County, R.I. (pt.)	560
Washington County, R.I. (pt.)	54
Bristol County, Mass. (pt.)	88
Norfolk County, Mass. (pt.)	6
Worchester County, Mass. (pt.)	8
Provo-Orem, Utah	218
Utah County	218
Pueblo, Colo	126
Pueblo County	126
Racine, Wis	173
Racine County	173
Raleigh-Durham, N.C	531
Durham County	153
Orange County	77
Wake County	301
Reading, Pa	313
Berks County	313
Redding, Calif	116
Shasta County	116
Reno, Nev	194
Washoe County	194
Richland-Kennewick-Pasco, Wash	144
Benton County	109
Franklin County	35
Richmond, Va	632
Richmond city	219
Charles City County	7
Chesterfield County	141
Goochland County	12
Hanover County	50
Henrico County	181
New Kent County	9
Powhatan County	13
Riverside-San Bernardino-Ontario, Calif	1,558
Riverside County	66[illegible]
San Bernardino County	895
Roanoke, Va	224
Roanoke city	100
Salem city	24
Botetourt County	23
Craig County	4
Roanoke County	73
Rochester, Minn	92
Olmsted County	92
Rochester, N.Y	971
Livingston County	57
Monroe County	702
Ontario County	89
Orleans County	38
Wayne County	85
Rockford, Ill	280
Boone County	29
Winnebago County	251
Rock Hill, S.C	107
York County	107
Sacramento, Calif	1,014
Placer County	117
Sacramento County	783
Yolo County	113
Saginaw, Mich	228
Saginaw County	228
St. Cloud, Minn	163
Benton County	25
Sherburne County	30
Stearns County	108
St. Joseph, Mo	[illegible]
Andrew County	[illegible]
Buchanan County	[illegible]
St. Louis, Mo.-Ill	[illegible]
St. Louis city, Mo	[illegible]
Franklin County, Mo	[illegible]
Jefferson County, Mo	[illegible]
St. Charles County, Mo	[illegible]
St. Louis County, Mo	[illegible]
Clinton County, Ill	[illegible]
Madison County, Ill	[illegible]
Monroe County, Ill	[illegible]
St. Clair County, Ill	[illegible]
Salem, Oreg	[illegible]
Marion County	[illegible]
Polk County	[illegible]
Salinas-Seaside-Monterey, Calif	[illegible]
Monterey County	[illegible]
Salisbury-Concord, N.C	[illegible]
Cabarrus County	[illegible]
Rowan County	[illegible]
Salt Lake City-Ogden, Utah	[illegible]
Davis County	147
Salt Lake County	619
Tooele County	[illegible]
Weber County	145
San Angelo, Tex	85
Tom Green County	85
San Antonio, Tex	1,072
Bexar County	[illegible]
Comal County	[illegible]
Guadalupe County	4[illegible]
San Diego, Calif	1,862
San Diego County	1,862
San Francisco-Oakland, Calif	3,251
Alameda County	1,105
Contra Costa County	656
Marin County	223
San Francisco County	679
San Mateo County	587
San Jose, Calif	1,295
Santa Clara County	1,295
Santa Barbara-Santa Maria-Lompoc, Calif	299
Santa Barbara County	299
Santa Cruz, Calif	188
Santa Cruz County	188
Santa Rosa, Calif	300
Sonoma County	300
Sarasota, Fla	202
Sarasota County	202
Savannah, Ga	231
Bryan County	10
Chatham County	202
Effingham County	18
Scranton, Pa. (See Northeast Pennsylvania SMSA.)	
Seattle-Everett, Wash	1,607
King County	1,270
Snohomish County	338
Sharon, Pa	128
Mercer County	128
Sheboygan, Wis	101
Sheboygan County	101

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[1] As of April 1, 1980. Source: U.S. Bureau of the Census, *1980 Census of Population*, vol. 1, parts A and B.

	1980 Population[1] (1,000)
Sherman-Denison, Tex	90
Grayson County	90
Shreveport, La	377
Bossier Parish	81
Caddo Parish	252
Webster Parish	44
Sioux City, Iowa-Nebr	117
Woodbury County, Iowa	101
Dakota County, Nebr	17
Sioux Falls, S. Dak	109
Minnehaha County	109
South Bend, Ind	281
Marshall County	39
St. Joseph County	242
Spokane, Wash	342
Spokane County	342
Springfield, Ill	188
Menard County	12
Sangamon County	176
Springfield, Mo	208
Christian County	22
Greene County	185
Springfield, Ohio	184
Champaign County	34
Clark County	150
Springfield-Chicopee-Holyoke, Mass-Conn	531
Hampden County, Mass. (pt.)	432
Hampshire County, Mass. (pt.)	86
Worcester County, Mass. (pt.)	4
Tolland County, Conn. (pt.)	9
Stamford, Conn	199
Fairfield County (pt.)	199
State College, Pa	113
Centre County	113
Steubenville-Weirton, Ohio-W.Va	163
Jefferson County, Ohio	92
Brooke County, W.Va	31
Hancock County, W.Va	40
Stockton, Calif	347
San Joaquin County	347
Syracuse, N.Y	643
Madison County	65
Onondaga County	464
Oswego County	114
Tacoma, Wash	486
Pierce County	486
Tallahassee, Fla	160
Leon County	149
Wakulla County	11
Tampa-St. Petersburg, Fla	1,569
Hillsborough County	647
Pasco County	194
Pinellas County	729
Terre Haute, Ind	177
Clay County	25
Sullivan County	21
Vermillion County	18
Vigo County	112
Texarkana, Tex.-Texarkana, Ark	127
Bowie County, Tex	75
Little River County, Ark	14
Miller County, Ark	38
Toledo, Ohio-Mich	792
Fulton County, Ohio	38
Lucas County, Ohio	472
Ottawa County, Ohio	40
Wood County, Ohio	107
Monroe County, Mich	135
Topeka, Kans	185
Jefferson County	15
Osage County	15
Shawnee County	155
Trenton, N.J	308
Mercer County	308
Tucson, Ariz	531
Pima County	531
Tulsa, Okla	689
Creek County	59
Mayes County	32
Osage County	39
Rogers County	46
Tulsa County	471
Wagoner County	42
Tuscaloosa, Ala	138
Tuscaloosa County	138
Tyler, Tex	128
Smith County	128
Utica-Rome, N.Y	320
Herkimer County	67
Oneida County	253
Vallejo-Fairfield-Napa, Calif	334
Napa County	99
Solano County	235
Victoria, Tex	69
Victoria County	69
Vineland-Millville-Bridgeton, N.J	133
Cumberland County	133
Visalia-Tulare-Porterville, Calif	246
Tulare County	246
Waco, Tex	171
McLennan County	171
Washington, D.C.-Md.-Va	3,061
District of Columbia	638
Charles County, Md	73
Montgomery County, Md	579
Prince George's County, Md	665
Alexandria city, Va	103
Fairfax city, Va	19
Falls Church city, Va	10
Manassas City, Va	15
Manassas Park city, Va	7
Arlington County, Va	153
Fairfax County, Va	597
Loudoun County, Va	57
Prince William County, Va	145
Waterbury, Conn	228
Litchfield County (pt.)	33
New Haven County (pt.)	195
Waterloo-Cedar Falls, Iowa	138
Black Hawk County	138
Wausau, Wis	111
Marathon County	111
West Palm Beach-Boca Raton, Fla	577
Palm Beach County	577
Wheeling, W.Va.-Ohio	186
Marshall County, W.Va	42
Ohio County, W.Va	61
Belmont County, Ohio	83
Wichita, Kans	411
Butler County	45
Sedgwick County	367
Wichita Falls, Tex	131
Clay County	10
Wichita County	121
Wilkes-Barre-Hazelton, Pa. (See Northeast Pennsylvania SMSA.)	
Williamsport, Pa	118
Lycoming County	118
Wilmington, Del.-N.J.-Md	523
New Castle County, Del	398
Salem County, N.J	65
Cecil County, Md	60
Wilmington, N.C	139
Brunswick County	36
New Hanover County	103
Worcester, Mass	373
Worcester County (pt.)	373
Yakima, Wash	173
Yakima County	173
York, Pa	381
Adams County	68
York County	313
Youngstown-Warren, Ohio	531
Mahoning County	289
Trumbull County	242
Yuba City, Calif	102
Sutter County	52
Yuba County	50

[1] As of April 1, 1980. Source: U.S. Bureau of the Census, *1980 Census of Population*, vol. 1, parts A and B.

NEW ENGLAND COUNTY METROPOLITAN AREAS (NECMA'S)

	1980 Population [1] (1,000)
Bangor, Maine	137.0
Penobscot County	137.0
Boston-Lowell-Brockton-Lawrence-Haverhill, Mass	3,662.8
Essex County	633.6
Middlesex County	1,367.0
Norfolk County	606.6
Plymouth County	405.4
Suffolk County	650.1
Bridgeport-Stamford-Norwalk-Danbury, Conn	807.1
Fairfield County	807.1
Burlington, Vt	115.5
Chittenden County	115.5
Hartford-New Britain-Bristol, Conn	1,051.6
Hartford County	807.8
Middlesex County	129.0
Tolland County	114.8
Lewiston-Auburn, Maine	99.7
Androscoggin County	99.7
Manchester-Nashua, N.H	276.6
Hillsborough County	276.6
New Bedford-Fall River, Mass	474.6
Bristol County	474.6
New Haven-West Haven-Waterbury-Meriden, Conn	761.3
New Haven County	761.3
New London-Norwich, Conn	238.4
New London County	238.4
Pittsfield, Mass	145.1
Berkshire County	145.1
Portland, Maine	244.6
Cumberland County	215.8
Sagadahoc County	28.8
Portsmouth-Dover-Rochester, N.H., Maine	415.4
Rockingham County, N.H	190.3
Strafford County, N.H	85.4
York County, Maine	139.7
Providence-Warwick-Pawtucket, R.I	865.7
Bristol County	46.9
Kent County	154.2
Providence County	571.3
Washington County	93.3
Springfield-Chicopee-Holyoke, Mass	581.8
Hampden County	443.0
Hampshire County	138.8
Worcester-Fitchburg-Leominster, Mass	646.4
Worcester County	646.4

[1] As of April 1.

Source: U.S. Bureau of the Census, *1980 Census of Population*, vol. 1 parts A and B.

STANDARD CONSOLIDATED STATISTICAL AREAS (SCSA'S)

	1980 Population [1] (1,000)
Boston-Lawrence-Lowell, Mass.-N.H	3,448
Boston, Mass	2,763
Lawrence-Haverhill, Mass.-N.H	282
Lowell, Mass.-N.H	233
Brockton, Mass	169
Chicago-Gary-Kenosha, Ill.-Ind.-Wis	7,870
Chicago, Ill	7,104
Gary-Hammond-East Chicago, Ind	643
Kenosha, Wis	123
Cincinnati-Hamilton, Ohio-Ky.-Ind	1,660
Cincinnati, Ohio-Ky.-Ind	1,401
Hamilton-Middletown, Ohio	259
Cleveland-Akron-Lorain, Ohio	2,834
Cleveland, Ohio	1,899
Akron, Ohio	660
Lorain-Elyria, Ohio	275
Dayton-Springfield, Ohio	1,014
Dayton, Ohio	830
Springfield, Ohio	184
Detroit-Ann Arbor, Mich	4,618
Detroit, Mich	4,353
Ann Arbor, Mich	265
Houston-Galveston, Tex	3,101
Houston, Tex	2,905
Galveston-Texas City, Tex	196
Indianapolis-Anderson, Ind	1,306
Indianapolis, Ind	1,167
Anderson, Ind	139
Los Angeles-Long Beach-Anaheim, Calif	11,498
Los Angeles-Long Beach, Calif	7,478
Anaheim-Santa Ana-Garden Grove, Calif	1,933
Riverside-San Bernardino-Ontario, Calif	1,558
Oxnard-Simi Valley-Ventura, Calif	529
Miami-Fort Lauderdale, Fla	2,644
Miami, Fla	1,626
Fort Lauderdale-Hollywood, Fla	1,018
Milwaukee-Racine, Wis	1,570
Milwaukee, Wis	1,397
Racine, Wis	173
New York-Newark-Jersey City, N.Y.-N.J.-Conn	16,122
New York, N.Y.-N.J	9,120
Nassau-Suffolk, N.Y	2,606
Newark, N.J	1,966
Jersey City, N.J	557
New Brunswick-Perth Amboy-Sayreville, N.J	596
Paterson-Clifton-Passaic, N.J	448
Long Branch-Asbury Park, N.J	503
Stamford, Conn	199
Norwalk, Conn	127
Philadelphia-Wilmington-Trenton, Pa.-Del-N.J.-Md	5,548
Philadelphia, Pa.-N.J	4,717
Wilmington, Del.-N.J.-Md	523
Trenton, N.J	308
Providence-Fall River, R.I.-Mass	1,096
Providence-Warwick-Pawtucket, R.I.-Mass	919
Fall River, Mass-R.I	177
San Francisco-Oakland-San Jose, Calif	5,180
San Francisco-Oakland, Calif	3,251
San Jose, Calif	1,295
Vallejo-Fairfield-Napa, Calif	334
Santa Rosa, Calif	300
Seattle-Tacoma, Wash	2,093
Seattle-Everett, Wash	1,607
Tacoma, Wash	486

[1] As of April 1, 1980.

Source: U.S. Bureau of the Census, *1980 Census of Population*, vol. 1 parts A and B.

Mr. YOUNG. The next group would be a panel. Ms. Janet Hale, Deputy Assistant Secretary for Policy and Budget, Department of Housing and Urban Development; Mr. Roger P. Craig, Assistant Postmaster General, Real Estate and Building Department, United States Postal Service; Mr. Ray Kline, Deputy Administrator, GSA, and Mr. Tom Kenney, Chief, Building Technology Section, Architectural and Buildings Systems Branch, Engineering and Construction Directorate, Office of the Chief of Engineers.

We appreciate your appearance before the committee, and I imagine we will try to follow this line, Mr. Kline, then, Mr. Craig, then Ms. Hale, and then Mr. Tom Kenney.

However, at this time I will have to recess the subcommittee to allow us to go out to the House Chamber to vote.

[Recess.]

Mr. YOUNG. We will proceed.

The full text of your prepared statements will appear in the record at this point.

[Statements referred to follow:]

STATEMENT OF ROGER P. CRAIG, ASSISTANT POSTMASTER GENERAL, REAL ESTATE AND BUILDINGS DEPARTMENT, U.S. POSTAL SERVICE

I am Roger P. Craig, Assistant Postmaster General, Real Estate and Buildings Department, U.S. Postal Service. I am appearing in response to the initiation of the Chairman for Postal Service testimony in the Subcommittee's present hearings concerning public buildings legislation.

The bill before the Subcommittee at this time, H.R. 630, would enact a comprehensive revision of the legislation governing the General Services Administration's buildings program. The legislation would have no direct impact on the Postal Service, which conducts its buildings program under the Postal Reorganization Act. However, we understand the Subcommittee has a general interest in some aspects of the Postal Service's facilities program and that there is particular interest in our activities under the Architectural Barriers Act.

My statement will focus on architectural barriers matters, beginning with some background and then turning to the specific reasons why we believe that barriers amendments such as those under consideration in the Senate should not be included in a new public buildings act.

The Postal Service is strongly committed to the policy of providing access for the physically handicapped to its facilities and services.

When the Postal Service was created in 1971, it immediately adopted the same facility access standards used in the rest of the Government, although the Postal Service was not covered by the Architectural Barriers Act at that time. In July 1976, the Postal Service issued some interim access standards of its own, which it felt went beyond the earlier standards. These new standards provided more detailed guidance where experience had shown that more detail was needed. They were intended to be at least as favorable or more favorable to handicapped postal customers and employees than the standards they replaced.

In October 1976 the Postal Service came under the Architectural Barriers Act. Following the procedures then required, the Postal Service issued new interim standards on June 27, 1977.

All of the standards-issuing activity I just described took place during an unprecedented postal building program initiated pursuant to the Postal Reorganization Act. Prior to that Act, capital funding for postal buildings had been intermittent at best. One consequence of the upsurge in postal building activities beginning in the 1970's is that much of today's postal system is operated out of buildings recently constructed with accessibility standards for the handicapped as a mandatory feature.

The Postal Service has been a statutory member of the Architectural and Transportation Barriers Compliance Board since its inception in 1973. We participate very actively in the Board's work. I have been the Postal Service's representative on the Board for the past three years or so and have attended every Board meeting but one during that time. My testimony today is on behalf of the Postal Service and not the Board.

In 1982, after consideration spanning two Administrations and several public rulemaking proceedings, the Board adopted Minimum Guidelines and Requirements for the accessibility standards that the four standard-setting agencies adopt under the Barriers Act. Since then, the four agencies—GSA, the Departments of Defense and of Housing and Urban Development, and the Postal Service—have been working on the joint development of Uniform Federal Accessibility Standards. These uniform standards appear to be nearing adoption by the four agencies.

While complying substantively with the Board's Minimum Guidelines and Requirements, the uniform federal standards are expected also to draw on the technical design standards for accessibility most widely used in states and localities and, therefore, those employed by practicing architects throughout the country. The response to the joint effort of the standard-setting agencies has been one of board support for our efforts.

The Board and the four standard-setting agencies thus have made tremendous progress over a period of years toward establishing a uniform regulatory structure meeting the goals of the Barriers Act. At the same time the federal sector has taken big strides in fulfilling the goals of the Act in practical terms by building accessible space. In the Postal Service this progress is already reflected, for example, in the more than 4,900 buildings, owned and leased, containing more than 50 million square feet of space, that have been constructed or altered in accordance with postal accessibility standards since the Barriers Act came on the scene. In countless other postal buildings, alterations have been made in ways designed to provide more access by handicapped individuals. Many of the rest of the buildings we use were constructed originally in accordance with state or local accessibility requirements.

It takes time for buildings to be built and for new design features to make their way into the built-up world. Today, however, the success of the program Congress mandated by the Architectural Barriers Act is assured. The fruits of that success are apparent in all the federal buildings that have been designed, constructed, or altered in accordance with handicapped access standards. The program is working well, in our view, and the commitment to accessibility is firmly a part of our ongoing efforts. Beyond those actions required by law, moreover, the Postal Service follows a policy of case-by-case consideration of special alterations to enhance accessibility, based on demonstrated need and economic feasibility.

Against this background, I believe it would be unwise to alter some of the central features of the accessibility law in a manner such as that under consideration in the Senate, in the bill S. 452. My reasons are these.

First, as I have indicated, present law is working well. Accessibility is being built into federal buildings at reasonable cost and at a steady pace. The prospective orientation that we believe Congress adopted in the Act is working, and it is bringing about a virtual transformation of the federally built environment. The point here is more than merely, "if it ain't broke, don't fix it." When something is working so well, it should be kept in place and supported, not re-engineered at its foundations.

Second, it is possible that a broad review of the Architectural Barriers Act might reveal some provisions that could be improved. Such a review should consider the Act in its entirety and how the agencies and the Board function under the Act. Such a review might well be helpful in the future. But changing some isolated provisions without any demonstrated need, as a tag-on part of important but almost completely unrelated legislation, could be very harmful.

Third, the particular changes proposed would be most disruptive. As I have mentioned, a four-year effort is just coming to fruition, to harmonize the administration of the Act through the issuance of uniform federal standards. Through improved coordination of all federal and federally funded programs, this initiative will I believe, have healthy, positive, and practical results in fostering handicapped access throughout our society. Much of the foundation for this progress could be called into question if key language of the underlying law were changed at this time, as it would be under the proposed barriers section of S. 452. Let me provide two examples.

First, the Senate amendments would curtail even further the already carefully limited power of the standard-setting agencies to waive or modify particular accessibility standards on a case-by-case basis. I am not aware of any evidence that this power has been abused in the past. Present law gives the Architectural Barriers Board the responsibility of assuring that waivers and modifications are proper. In the Postal Service, the fact is that we have exercised this power only on a very few occasions. To eliminate or severely curtail a safety valve that is being employed responsibly could mean that available resources in some cases will be wasted on unnecessary and useless features while more productive steps fail to be taken. No one would stand to benefit from the kind of arbitrary program that leaves no room for good, sound management and common sense.

Second, the amendments would revise key terminology in the law. Probably the most ambiguous and potentially harmful change would be to replace the current law's standard of "ready access and use" with a new concept of "full accessibility." I believe that the uniform standards which are about to be adopted show that the "ready access and use" concept is broad and sensible enough to assure that accessibility is achieved without saddling the public with absurdly high and unnecessary costs. Revising the words of this basic statutory concept could well lead to arguments, regulatory fights, and court battles in which some might insist that the language be taken quite literally, so that, for example, every door, every toilet stall, every drinking fountain, every area (including such places as roofs and utility areas) and every parking space would be said to require accessibility features for the handicapped. Such an interpretation would be impossible to comply with, and even trying to comply could be wildly and needlessly expensive. I do not believe that such a reading is what the Senate committee intended, but the language holds the potential for introducing uncertainty and division into the barriers elimination effort at a time when important progress is being achieved.

To summarize: the current law is working well. Changes to the underlying language now would come just at the time when existing concepts are about to give rise to a very promising set of uniform regulatory standards, the product of years of painstaking work and the exploration of all points of view. We know of no reasons or experience under the Act that could warrant such tinkering with the law at this time. The Congress can take pride in the Architectural Barriers Act, as a highly effective piece of legislation which is accomplishing its very important social purpose in an orderly and successful fashion.

This concludes my prepared testimony. Thank you.

STATEMENT OF JANET HALE, DEPUTY ASSISTANT SECRETARY FOR POLICY AND BUDGET, OFFICE OF HOUSING, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Thank you for inviting the Department of Housing and Urban Development to appear before the Subcommittee on Public Building and Grounds in hearings on H.R. 630, the Public Buildings Act Amendments of 1983. I am Janet Hale, Deputy Assistant Secretary for Policy and Budget in the Office of Housing.

As requested in your letter of invitation, Mr. Chairman, the Department has reviewed this legislation as it pertains to leasing policies of the General Services Administration. We support the provision raising the threshold for prospectus approval of lease actions by the Congressional Committees on Public Works for $500,000 to $1,000,000. Given the increased cost of rental space since the original amount was set in 1959, this is a reasonable and indeed needed increase.

With regard to the Subcommittee's concern with increases in the amount of leased space, the Department is working to reduce our own leased space needs. As of May 1, 1983, the Department had in its inventory 3,399,030 square feet of office, special and storage space, all of which is controlled by the GSA. In accordance with Executive Order 12411 requiring agencies to reduce office space, on May 18, 1983 the Department submitted a space reduction plan to the GSA identifying 600,878 square feet of excess space, which HUD is in the process of releasing.

It is my understanding that the Subcommittee is also interested in the Department's role as a standard-setting agency under the Architectural Barriers Act of 1968, as amended, a role we share with the General Services Administration, the Department of Defense, and the United States Postal Service, and our views on the amendments to that Act that are now contained in Senate Bill S. 452. In addition, I understand that you are interested in the cost impact of these amendments.

I will address these points in my testimony but before turning to the legislation, I would like to provide some background information on our experience with the Architectural Barriers Act. HUD is responsible for establishing standards for all residential construction covered by that Act. To carry out this responsibility, the Department issued its regulation, 24 CFR Part 40, in 1969 to establish standards for design, construction and alteration of publicly owned residential structures. This regulation references the American National Standards Institute (ANSI) A117.1, "Specifications for Making Buildings and Facilities Accessible to the Physically Handicapped," as the technical design standard.

This standard, first published in 1961 and reaffirmed in 1971, was the original standard for accessible design and contained basic specifications for general use in designing buildings to be usable by people with physical handicaps. There was at that time no body of research on those aspects of design related specifically to residential construction. Therefore, when the ANSI A117.1 Committee began its next periodic update of the standard in 1975, this Department was pleased to be able to fund a $500,000 research program with the goal of expanding the ANSI Standard to include specifications for dwelling units. That research project resulted in the revised and expanded 1980 edition of ANSI A117.1. This new standard represented a significant step forward in the continuing effort to assure that handicapped people have equal access with all other citizens to the built environment, and this Department is proud to have contributed to that effort.

Since June of 1981 we have been working with the other three standard-setting agencies in a project that I believe to be an equally significant milestone in the history of accessible design. For the first time since passage of the Architectural Barriers Act, the four standard-setting agencies are cooperating to produce a single document that can be used throughout the Federal Government, the Uniform Federal Accessibility Standard (UFAS). The UFAS is based closely on the 1980 ANSI Standard, which is referenced by the three major model building codes and by most State and local codes, and is therefore the standard best-known to architects across the country. Equally important, the UFAS will meet all the requirements of the Minimum Guidelines and Requirements for Accessible Design established by the Architectural and Transportation Barriers Compliance Board (ATBCB).

The proposed standard was jointly published by the four agencies on April 29 of this year. This was, itself, an exceptional example of interagency cooperation. Public comment strongly supported the effort.

Up to this time, each of the agencies has issued its own standard independently. HUD, as I have noted, references the ANSI Standard. The other agencies have developed similar, but not identical, standards that are based on the ANSI document but incorporate certain changes. All of which means that the architect or builder in private practice must refer to a different document, depending on which agency is the client, in order to assure that the requirements of the Architectural Barriers Act are met. Once the UFAS is completed and adopted by each of the agencies, this confusing and inefficient system will be eliminated. It will be one of the most important improvements in the fifteen-year history of the Architectural Barriers Act.

We are convinced that in those fifteen years the Act has demonstrably changed the world in which our handicapped citizens live, transact business, and pursue leisure activities. Federal buildings, parks and recreation areas, public housing and transportation facilities—all those elements of our environment where Federal money is used for design, construction or alteration—have been planned and built to be accessible to all. Fifteen years of experience have shown that the Act works and works well. That is why are concerned about the changes proposed in Section 307 of S. 452. We believe that certain of those changes would make compliance with and enforcement of the Act extremely difficult. In other instances, we believe that the proposed legislation could lead to costly, unproductive litigation. This Department would far rather expend our efforts and our fiscal resources on constructive actions to improve accessibility.

Specifically, our concerns about Section 307 are these:

The language of the section, and particularly the definitions of "physically handicapped person" and "future accessible," is so broad that there is likely to be great potential for future litigation. Use of the phrase "fully accessible" has become a term of art which includes much more than the present "ready access" language, and would be more of a burden to comply with. The definition of "physically handicapped person", which includes those with sensory handicaps, could further increase this burden. Taken together, these definitions are susceptible to broad interpretation and suggest a major change in the levels of accessibility currently required under the Architectural Barriers Act which could greatly increase costs to the Federal Government.

Three other provisions are also of concern. First, the strict limitation on waiver and modification authority could seriously hamper construction and alteration projects, as well as leasing or acquisition activities. Limiting the scope of the waiver provision is a problem since none of the proposed bases for waiver or modification pertains to the situations in which HUD frequently finds itself. Under the present system, waivers are reviewed by the Architectural and Transportation Barriers Compliance Board and are annually reported to Congress through the General Services Administration. In light of the fact that no indication of abuse of the system has been reported, such drastic restriction on the authority does not seem to be justified.

Second, the paragraph in 307(b)(3) regarding contract provisions to require accessibility in any contract for design, construction or alteration conceivably could trigger accessibility requirements in parts of a building not affected by the work under contract. The concept of requiring such provisions is not in itself objectionable, but clarifying language is needed to ensure that the accessibility requirements in such contracts are limited to the work covered by the contract.

Third, the addition of the word "acquired" in clause (1) of the first section of the Architectural Barriers Act is a point of concern. This may have been intended to include purposeful acquisitions, such as post offices. However, "acquired" has a broad meaning as it applies to HUD programs since HUD "acquires" a building through a default under our FHA insurance programs. These are primarily privately-owned residential structures, which are exempt from the Act; they are acquired involuntarily by the Department rather than acquired for public purposes; and they will be resold, probably into private hands.

However, before we can dispose of these properties circumstances often require that repairs be made, some of which can be construed as alterations. We are bound by the definition of "alteration" as used in the Uniform Federal Accessibility Standards and ANSI A117.1. If the word "acquired" is added, those repairs which in some instances may come under the definition of "alteration" could require us to make the building accessible, regardless of whether, in the hands of the new owner, that would be required by the Architectural Barriers Act.

More generally, however, this Department's primary concern is the application of "full accessibility" requirements to housing. As now defined by the bill, they could be interpreted to entail installing elevators in all buildings with two or more floors, as well as making all dwelling units accessible. This would represent a significant addition to development costs.

In an earlier cost study, which I will submit for the record, it was estimated that these requirements would increase costs in new construction by 16 percent over the cost of meeting current accessibility requirements. If these percentages were applied to our current public housing production, the cost for the approximately 40,000 units now in the pipeline and 5,000 units provided in our FY 1984 appropriation would be increased by $262 million.

The costs for modernization are even higher: the increase was estimated at a full 64 percent. The magnitude of this increase points up the significance of our concern that the provision affecting contract requirements could mandate full accessibility throughout a building on which any rehabilitation work was being undertaken.

This cost study was based on the requirements of the ATBCB Minimum Guidelines issued under the previous administration, which have since been modified. In fact, Section 307 could increase costs beyond these estimates, if it were interpreted to require, for example, that all entrances to a building be made accessible, rather than limiting the requirement to the principal entrance.

Elevators and lifts represent the bulk of the incremental costs in both new construction and modernization. Clearly, given budget constraints, this increased cost would have significant impact on the public housing program by reducing proportionally the number of units that could be developed or modernized with available funds.

Certainly, it is appropriate from time to time to review legislation in order to assure that it continues to speak to the needs of the day. After fifteen years, it may be of merit to review the Architectural Barriers Act. It should be, however, a comprehensive and thorough review by all concerned—the Federal Departments and agencies that comply with it, the Architectural and Transportation Barriers Compliance Board that enforces it, and the handicapped citizens served by it. Such a review should also encompass the related legislation, specifically Section 502 of the Rehabilitation Act of 1973, as amended, which established the ATBCB and spells out its relationship with the Federal agencies. To amend the Act in piecemeal fashion serves no one well; the particular amendments offered in Section 307 could in fact be deterimental and could seriously inhibit our current efforts to improve compliance and enforcement.

I appreciate the opportunity to communicate our comments to this Subcommittee. Any additional information that you would like to request from the Department will be promptly and fully provided. We look forward to cooperating with this Subcommittee in any future deliberations on this important topic. Assuring architectural accessibility in Federal-funded housing construction is a key element in the Department's ongoing efforts to serve handicapped people in all our programs, just as it is a prime concern of this subcommittee.

ATTACHMENT

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

ESTIMATED COST OF ADDITIONAL ACCESSIBILITY REQUIREMENTS IN ATBCB MINIMUM GUIDELINES AND REQUIREMENTS, JANUARY 16, 1981 EDITION—ESTIMATES PREPARED MARCH 1981

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

NEW CONSTRUCTION

Program	Base Year FY 1980 Construction Cost*	Additional Cost to Apply 1981 A&TBCB Minimum Guidelines and Requirements	% Increase That Would Have Occurred Under A&TBCB Requirements
Housing	(all figures in millions of $)		
Conventional Low-Income Public Housing			
** Hi-rise	524.63	36.81	7%
Garden Apts.	329.63	33.78	10%
Single family/ Townhouses	816.79	199.43***	24%
TOTAL	$ 1,671.05	$ 270.02	16%

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*Cost includes current HUD accessibility requirements

**Hi-rise = five or more floors

***Assumes installation of platform lifts rather than residential elevators; if local codes do not permit lift installations, elevators would be installed at an additional cost of $173.44 million.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

COMPREHENSIVE AND REGULAR MODERNIZATION

Program	Base Year FY 1980-81 Construction Cost	Additional Cost to Apply 1981 A&TBCB Minimum Guidelines and Requirements	% Increase That Would Have Occurred Under A&TBCB Requirements
	(all figures in millions of $)		
Housing			
Conventional Low-Income Public Housing	$ 657.64	$ 419,93	64%

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

NEW CONSTRUCTION

(all figures in millions of $)

Feature	Building Type/Cost				
	Hi-rise	Garden Apartments	Single family/ Townhouses		Total
Parking	.06	—	—		.06
Elevators	—	5.25	86.72		91.97
Entrances	—	1.05	30.00		31.05
Doors	4.01	3.83	15.22		23.06
Toilets/ Bathrooms	11.04	7.31	27.97		46.32
Telephones	—	—	—		—
Controls	—	—	—		—
Seating, Tables & Work Surfaces	5.50	3.60	8.93		19.03
Assembly Areas	.20	.14	.35		.69
Storage	16.00	12.60	30.24		58.84
Total	36.81	33.78	199.43		270.02

— = less than $50,000

These estimates do not include expenses for visual alarm systems

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

ALTERATIONS

(all figures in millions of $)

Feature	Building Type/Cost				
	Hi-rise	Garden Apartments	Single family/ Townhouses	Combined	Total
Parking				1.04	1.04
Elevators		136.40	60.00 (lifts)		196.40
Entrances				34.34	34.34
Doors				5.40	5.40
Toilets/ Bathrooms				152.35	152.35
Telephones				—	—
Controls				—	—
Seating, Tables & Work Surfaces				—	—
Assembly Areas				.40	.40
Storage				30.00	30.00

Total 419.93

STATEMENT OF THOMAS A. KENNEY, CHIEF, BUILDING TECHNOLOGY SECTION, ENGINEERING AND CONSTRUCTION DIRECTORATE, OFFICE OF THE CHIEF OF ENGINEERS

Current Department of Defense policy is that all facilities worldwide which are open to the public, or to limited segments of the public, or which may be visited by the public in the conduct of normal business, shall be designed and constructed to be readily accessible to physically handicapped persons. All morale, welfare, and recreational facilities including nonappropriated funded facilities available to dependents or retirees shall be so designed. All hospitals and facilities for the care and rehabilitation of the sick and/or injured shall be so designed. All manufacturing facilities, administrative facilities, educational facilities or any other facilities where civilian workers may be employed including facilities constructed under other than military construction authorizations and including contractor-owned facilities where the Department of Defense is funding all or any part of the construction, shall be so designed. In fact, every facility should be designed to assure access to physically handicapped persons unless its intended use is specifically restricted to able-bodied military personnel.

Section 307 in S. 452 impacts on this Department of Defense policy by amending the Architectural Barriers Act of August 12, 1968, as amended through 1978. Three items in Section 307 appear to impose costly and impractical criteria, and accordingly, objection is taken for the following reasons:

(A) Amending the phrase "ready access" to "fully accessible" will cause Military Construction Programs to suffer from an increase in cost without an appreciable return in benefits to physically handicapped persons.

(B) Amending the applicability to "any contract for all or any part of the design, construction, or alteration involved" will place an impractical requirement on projects to renovate existing facilities.

(C) Amending the authority to grant waivers to standards developed by the standard-prescribing agency, will limit the agency in the ability to avoid impractical or cost prohibitive projects on a case-by-case basis.

Accordingly, it is recommended that Section 307 be deleted from S. 452 and that the Architectural Barriers Act of August 12, 1968, as amended through 1978 (codified at 42 U.S.C. Section 4151 et seq.), remain as currently written.

Mr. YOUNG. Please proceed.

TESTIMONY OF JANET HALE, DEPUTY ASSISTANT SECRETARY FOR POLICY AND BUDGET, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT; ROGER P. CRAIG, ASSISTANT POSTMASTER GENERAL, REAL ESTATE AND BUILDINGS DEPARTMENT, U.S. POSTAL SERVICE; RAY KLINE, DEPUTY ADMINISTRATOR, GENERAL SERVICES ADMINISTRATION; AND TOM KENNEY, CHIEF, BUILDING TECHNOLOGY SECTION, ARCHITECTURAL AND BUILDING SYSTEMS BRANCH, ENGINEERING AND CONSTRUCTION DIRECTORATE, OFFICE OF THE CHIEF OF ENGINEERS

Mr. KLINE. Mr. Chairman, my name is Ray Kline, and I am the Deputy Administrator, General Services Administration. Accompanying me today are Richard Field, Acting Assistant Commissioner for Design and Construction, Public Buildings Service, and John Weber, Architect, Design Management Division, Office of Design and Construction.

It is a privilege to appear before the subcommittee as a representative of the General Services Administration, and to present our views concerning the agency's policies and programs regarding accessibility.

Let me state at the outset that we at GSA strongly support the concept that all Federal facilities should be accessible to all persons and we are proud that our progress over the years documents that strong support.

More than 20 years ago, GSA staff participated on the now historic American National Standards Institute Committee A117.1-1961 that produced the standard that served as the basis for nearly every initial accessibility standard or code in this country. Our efforts clearly predated the Architectural Barriers Act of 1968.

We do now, as we have for many years, require that GSA construction efforts comply with requirements of the ABA. Both our staff designers and our contract architects/engineers are required to comply with provisions of the Federal Property Management Regulations, subpart 101-19.6, "Accommodations for the Physically Handicapped."

These regulations currently reference the interim "GSA Accessibility Standard" as their technical basis. This interim document is based on the 1980 edition of the ANSI A117.1 Standard.

We have recently completed an update of our Standard Form 2974 that agencies submit to GSA to report accessibility efforts. The new form permits acquisition of more useful information while simultaneously reducing paperwork burden.

We also have largely completed the "Voluntary GSA Retrofit Program," a $30 million program targeted at making major Federal facilities that predated the ABA accessible in essential areas of entrances, restrooms, drinking fountains, and telephones.

All of our lease solicitations continue to contain a complete range of accessibility requirements. While we do not control the design and construction of privately funded facilities, and they still are tempered by market conditions, we believe that we continue to make progress in achieving the goal of essential accessibility in leased facilities. Our regulations have for some time required acceptance of the most accessible space offered.

But we are most pleased to appear before the subcommittee and to be able to report that we are rapidly completing work on the Uniform Federal Accessibility Standards—Uniform Standards.

These standards, developed jointly by the Department of Defense, the Department of Housing and Urban Development, the U.S. Postal Service, and GSA, will replace four current differing standards published by the agencies, thus achieving uniformity throughout the Federal Government.

But more importantly, because they use the format and graphics of the new 1980 ANSI Standard, the document referenced by all of this Nation's model building codes and the most widely referenced current standard used in State access laws, they will achieve uniformity throughout the design community.

This goal of achieving national uniformity of standards has long been sought by proponents of accessibility and was widely supported during the Uniform Standards' public comment period and has been reinforced since. In this regard, we would like to submit for the record a letter received from Mr. Edward Matthei, FAIA, chairman, ANSI A117.1 Secretariat.

[The letter referred to follows:]

NATIONAL EASTER SEAL SOCIETY, PRESIDENT'S COMMITTEE ON EMPLOYMENT OF THE HANDICAPPED, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT,

Chicago, Ill., October 12, 1983.

Mr. RAY KLINE,
Deputy Administrator, General Services Administration,
Washington, D.C.

DEAR MR. KLINE: Although the ANSI A117.1 Committee on the proposed Uniform Federal Accessibility Standard during the public comment period, we have followed the development of the standard with interest. Concurrent with your work leading to the issuance of a final Federal standard, our Committee has initiated the review process leading to reaffirmation or revision of the ANSI A117.1 in 1985.

I am the Chairman of the Committee—the central coordinating body—for that effort, which involves the work of five Task Forces concentrating on various aspects of the accessiblity standard. We very much appreciate the support we are getting in that effort from the agencies through membership on the various Task Forces. We are now reviewing possible technical changes, with a later phase to make any editorial corrections and changes in the format that are deemed necessary.

On October 3, chairmen of the five Task Forces charged with carrying out the technical review met with the Secretariat and reported the recommendations for changes that their members had endorsed. The changes to ANSI proposed in the UFAS were reviewed and well received by the members of one of the five Task Force and most have been recommended for consideration in the ANSI process.

As noted, we anticipate that refinements to the ANSI format may also be part of any recommended revisions for a 1985 edition of ANSI A117.1 We believe that certain clarifying changes and improvements can be made while maintaining basic continuity with the ANSI format that is now referenced in the majority of building codes across the country.

We are particularly pleased with the increasing strength of the movement toward a single, nationwide accessibility standard, and believe that the proposed Uniform Federal Accessibility Standard has performed a valuable service in that effort.

I am enclosing a copy of a paper that I recently presented to the 1983 National Codes and Standards Conference held in Chicago by the American Institute of Architects, which should provide you with useful background information on ANSI A117.1 and the objectives we hope to achieve during the current review process.

Sincerely

EDWARD H. MATTHEI,
Chairman, A117.1 Secretariat.

Enclosures.

ANSI A117.1-1980—A KEY TO INDEPENDENT LIVING

(By Edward H. Matthei, FAIA, Chairman of ANSI A117.1 Committee)

A paper prepared for the 1983 Codes and Standards Conference "Technology Talks" sponsored by the Codes and Standards Committee of the American Institute of Architects, October 7, 1983, Chicago, Ill.

"The Specifications for Making Buildings and Facilities Accessible to and Useable by Physically Handicapped People", approved and published by the American National Standards Institute (ANSI A117.1-1980), have been a key factor in achieving independent living for many thousands of disabled individuals and their families throughout America.

With the benefits of rehabilitation treatment and training in activities of daily living, and the ability to participate in normal educational, recreational, employment, and residential situations through the elimination of environmental barriers, many individuals are attaining the fullest development of their human potential, regardless of any physical disability.

The importance of ANSI A117.1 should not be underestimated by those of us in the planning, design and construction fields who are substantially concerned with the safety, welfare and quality of the built environment for all human beings. The Standard is, without question, the most widely referenced document in federal, state and local building codes, ordinances, and regulations which mandate design requirements for individuals with physical disabilities. The application of the Standard's design criteria throughout the country is considered by many to be one of the key factors in facilitating the equality of rights guaranteed to disabled individuals under the Constitution of the United States.

The regulations governing the development of an American National Standard assure that all persons interested in the needs of disabled individuals have an opportunity to respond, either directly or through their national organizations. The major advantages which accrue from having a single nationally recognized design standard, are uniformity, public confidence in its application, and greater assurance to industry with respect to product development. It is these latter considerations that increase the responsibility of the Secretariat and Committee members who are charged with the maintenance and periodic review of the Standard. Suggested revisions and additions to the Standard must have an *objective and defensible rationale*, and also be based upon adequate research or substantiated experience before submission to a vote of the full Committee.

ANSI A117.1 is a document developed through a consensus process and requires an affirmative vote by a substantial majority of the organizations and agencies making up the Committee before an addition or change can be made in the Standard.

The present Committee is made up of organizational members representing all major disability groups, the design professions, rehabilitation specialties and services, building owners and management associations, building product manufacturers, building code developers and administrators, senior citizen organizations, insurance companies and federal standard setting departments.

The American National Standards Institute requires due process for approval or withdrawal of any of its standards and assures openness, representation of interests, written procedures and equal consideration of all views and objections.

Each complete American National Standard is required to be reviewed at least every five years to determine whether it should be reaffirmed, revised, or withdrawn, in accordance with the Institute's procedures. Under these procedures, any proposed changes to ANSI A117.1-1980 must be submitted to the Secretariat in sufficient time to be reviewed and analyzed, and if appropriate, circulated to Committee representatives of the member organizations for their comment before being placed upon the official ballot prior to the end of 1985.

Member organizations of the ANSI A117.1 Secretariat, with ultimate responsibility for its maintenance and review, are the National Easter Seal Society, President's Committee on Employment of the Handicapped and the U.S. Department of Housing and Urban Development.

In order to assure the involvement of all Committee members, and that all suggested changes which have already been received are carefully reviewed and analyzed, the Secretariat has established five Task Forces who will initially review and recommend actions on proposed revisions within the scope of assigned sections of the Standard. The responsibilities of the five task forces are as follows:

Task force: (1) Public Spaces, Accessible Routes/Egress and Assembly Areas; (2) Operating Features; (3) Plumbing Features; (4) Audio and Visual Features; and, (5) Housing.

Preliminary reports from each of the Task Forces were received by the Chairman of the Committee and the Secretariat on October 3, 1983.

Due to the fact that the review process has really just begun, it is inappropriate at this time to attempt any detailed listing of the suggestions recommended by these Task Forces. We can however, indicate in general, the broad areas of concern and provide you with some assurance that the consistency in the Standard's development since its introduction in 1961 will be preserved. Suggestions include:

1. Updating and improvement in the clarity of the graphics used throughout the Standard.
2. Review of the Standard's format in the interest of simplifying its use and reducing the number of cross references.
3. An attempt should be made to reconcile the few remaining discrepancies between the currently proposed Uniform Federal Accessibility Standard and ANSI A117.1 in the interest of achieving uniformity.
4. Numerous recommendations have been made by several industry representatives and agencies concerned with the needs of disabled individuals, in the area of operating features for telephones, elevators, door hardware, and equipment for hearing impaired persons. These suggestions appear to require minimal modifications in the Standard to achieve greater functional usability.
5. Based upon field experience in the use of the present Standard a number of dimensional adjustments have been recommended, for clearances, and in some cases reach limitations, at doorways, public telephones, within toilet rooms and in connection with several other building features.

6. Changes suggested by advancements in technology relate primarily to the specifications for alarm and communication systems which can be useful to individuals with either visual or hearing impairments.

We will have to wait for a more complete report from the Task Force on Housing before attempting to broadly categorize the suggested changes in this section of the Standard. There is some indication by code enforcement officials, and the home building industry representatives on this Task Force that there may exist a need to further define adapted as well adaptable housing requirements.

During the remaining months of 1983, the Task Force Chairmen will serve as a Coordinating Committee, working with the Chairman of the full Committee and the Secretariat to clarify possible misunderstandings, reconcile areas of overlap or contradiction and assist in the compilation of suggested changes to be sent to the full Committee for their preliminary review and comment.

The appropriateness of any design specification for inclusion within the ANSI Standard depends upon a number of factors, and must take into consideration the nationwide acceptance of the Standard as reference in federal and state legislation, building codes and zoning ordinances. Evaluation of proposed changes must necessarily include consideration of the following:

1. The adequacy of documentation and substantiation in support of the proposed change.
2. The qualifications of those supporting the proposed change.
3. The legality of the design specification, if imposed as a requirement on the general public.
4. The cost/benefit ratio with respect to the proposed change and its acceptance by the general public.
5. The ability and probability for enforcement.
6. The extent to which the proposed design solution can accommodate and benefit the general public.
7. The degree to which the proposed design specification is, or should be, covered within the scope of national, state, or local building codes.

In the development of the Standard to date, care has been taken to limit design criteria to the specific needs of physically handicapped people and avoid specifications such as the height of stair railings which are normal safety features including within the scope of the major building codes.

The Standard is also basically a design specification and leaves to the adopting enforcement agency, the application criteria such as where- when-, and to what extent- the specifications will apply. It is interesting to note that requests have been received from the major building code organizations to delete the phrase "an appropriate number but at least one" where it appears within the present Standard. While a contradiction to the previously stated policy of avoiding numbers or percentages, the phrase was originally thought to be necessary by many of the organizations representing disabled persons. Experience has proven in numerous instances that those who my be reluctant to provide a reasonable number, which meets the requirement of a local authority have, in their defense argument, attempted to interpret ANSI A117.1, as requiring only one.

There are indications that if minor modifications are made in ANSI A117.1, such as given in the above example, a major step for achieving uniformity in the application of the design specifications may be possible through the referencing of the Standard in all of the major building codes and federal design standards. As Chairman of the ANSI A117.1 Committee, I am placing this objective high on the list for accomplishment during the current review process.

During the conference, life safety and risk measurement have been expressed as appropriate concerns. It is important that these concerns not be taken out of context in relationship to the needs of disabled persons. Their needs, in most cases, for a place of refuge or means of egress in high rise building fires are similar if not identical, to other occupants, including those with limited stamina, children, many senior citizens and those who may have suffered injury as the result of the fire.

The concept of building compartmentalization into zones of refuge, both horizontally and vertically, significantly reduces the risk to building occupants, and provides the necessary time factor for the trained firefighters to either render the building safe or implement rescue operations. There is no question that the everyday risks we all take, such as crossing a street, are heightened for individuals who may have limitations in mobility, be totally blind or partially sighted, deaf, or confused.

The point we wish to make here is that disabled individuals are very much a part of the general public today, and in a few instances the design parameters previously in common use for buildings and facilities should be extended to include a larger definition of the "general public". Given the number of disabled individuals who have achieved independent living through the elimination of environmental barriers, there is a growing consensus that building design features relating to fire safety should, to every extent possible, provide equal protection for all occupants.

While the present ANSI A117.1-1980 Standard addresses the need for additional features in alarm systems, accessible routes for egress, and aother basic safety considerations, it is generally recognized that the expertise and responsibility for developing a comprehensive approach to the subject rests with the major building code writers. Members of our Secretariat and Committee are currently involved with other organizations such as the National Bureau of Standards and the National Fire Protection Association in addressing the specific life safety needs of disabled individuals relating to fire and other hazards. It is hoped that through cooperative efforts we can better define the needs, identify the problems, and develop practical solutions.

There are several which the ANSI A117.1 Secretariat would like to see accomplished in addition to updating the Standard before the end of 1985.

1. The incorporation of agreed upon life safety design features within the scope of all the major building codes which, to the extent possible, recognize the needs of disabled persons in the context of being part of the general public.

2. The referencing of ANSI A117.1 in all major building codes, regulations and ordinances with respect to design specifications even if the application requirements vary.

3. The adoption of appropriate design specifications which are now included within the scope of ANSI A117.1 by industry standard setting groups, trade and manufacturing associations, and similar organizations. This will assure wider acceptance, simplify application and hopefully promote some uniformity in product development.

In closing, let me say that the ANSI A117.1 Secretariat is willing to consider any proposals you may care to make and work with the organizations we have mentioned to achieve these objectives. Hopefully the time may not be too far off when the design specifications found in ANSI A117.1 become an integral part of all building codes and ordinances and the need for a separate document disappears.

Mr. KLINE. The uniform standards' concept of use of the ANSI format and graphics is essential to the effort toward uniformity. This is because in most architectural offices, it is the draftsmen and designers in the "back rooms" who usually apply the details to a design necessary for accessibility.

Knowing where to consistently find a provision does much to improve compliance.

We also wish you to know that agencies' staffs have been working closely with staff of the Architectural and Transportation Barriers Compliance Board to remove the remaining differences between the uniform standards and the ATBCB's "Minimum Guidelines and Requirements for Accessible Design."

We believe resolution of the remaining issues, mostly editorial and format related, is near at hand.

In short, we are painting a bright picture of Federal accessibility standards predicated on the current concept of "ready access and use."

A change now in the basis from "ready access and use" to full accessibility such as is envisioned in section 307 of S. 452, would necessitate a complete reworking of these Federal standards before they have been implemented.

Beyond this basic concern, we find five other major concerns with the Senate's amendment.

First, the amendments as written are impossible to define or enforce. The bill may require that buildings be as accessible and usable to persons with a physical impairment as they are to those without a mobility impairment.

On its face, this is impossible. For example, no technology applied to a staircase will provide mobility to "the same extent that an individual with unimpaired mobility can use such a building."

The definitions for "physically handicapped person" and "fully accessible" may be so broad as to require equivalent use for quadraplegics as for an able-bodied person.

Second, the amendments will cause any maintenance or energy retrofit involving construction to trigger "full accessibility" requirements within existing facilities. The requirement that "any contract for all or any part of the design, construction or alteration involved shall so provide" will add such expense to even modest repairs that necessary safety repairs may have to be deferred.

Thus, simple retrofits of stair treads in an older facility could easily be interpreted as requiring new elevators, toilet renovations, and more.

Third, limitations on waiver and modification authority will hamstring the Federal leasing program. Space meeting the amendment's definition of "fully accessible" does not exist in today's market.

Even if one accepts the questionable premise that private owners will ultimately construct facilities that go beyond local and State mandated requirements for less than ready access, space conforming to a Federal mandate of "full access" must await that standard's issuance and the design and construction processes that would follow.

In the meantime, GSA would either have to stop leasing or would have to extensively prefit all leases before occupancy. Such "prefits" would surely raise extreme questions regarding beneficial improvements to lessor's space.

Beyond these concerns, we also question the need for wholesale restrictions on waivers and modifications. Surely the half-dozen waivers granted by the Administrator during a typical year do not represent an excessive use of the authority.

Fourth, the Public Buildings Act is not the proper place to amend the Architectural Barriers Act. While the Public Buildings Act is directed to GSA, the ABA is directed to the entire Federal Government.

Further, the immersion of the amendments within the act could bypass full public attention causing many groups representing various viewpoints regarding accessibility to miss them. Such a major change in policy should be presented on its own platform.

Fifth, the amendments would have a potentially enormous fiscal impact on the Government depending upon how the term "fully accessible" is interpreted.

In summation, we believe that the Architectural Barriers Act should not be amended through the Public Buildings Act.

This concludes my prepared testimony. I welcome any questions that you may have.

Thank you.

Mr. YOUNG. Thank you very much, Mr. Kline.

Mr. Roger Craig, the Assistant Postmaster General.

Mr. CRAIG. Thank you, Mr. Chairman, I am Roger P. Craig, Assistant Postmaster General, Real Estate and Buildings Department, and following your suggestion, I will try to summarize my statement, which I think will be quite possible because I think Mr. Kline has just covered a very wide range of topics on which there is substantial agreement between the Postal Service and the General Services Administration.

The Postal Service has been building accessible space when it designs, constructs and alters its buildings for some period of time now under various standards, really going back to the enactment of the Architectural Barriers Act in 1968.

During some of that period of time, the Postal Service was not legally required to follow the dictates of the Architectural Barriers Act, but we have had standards in place throughout that period of time.

Since the mid-1970's, we have been obligated to follow the act, and we have had standards in place, as I say, throughout that period of time.

We are also a member of the Architectural and Transportation Barriers Compliance Board, along with the other four so-called standard-setting agencies which are represented on this panel here today.

I have been very active in the activities of the Board. I have been the Postal Service's designated member on that Board now for over 3 years, and I think my attendance record is fairly good.

I think I have missed exactly one meeting during that period of time.

We in the Postal Service are completely committed to building accessible space, and I think our record is very, very good. We have built new buildings during the period of these standards, something in the order of about 5,000 new buildings containing something in the order of 50 million square feet of space.

That is just new buildings. That doesn't cover a number of retrofits that we have done where we have altered buildings and voluntarily gone beyond what the statute requires.

It also doesn't cover a large number of buildings that we lease or acquire which have been built either under State or local codes that provide for accessibility.

We think the basic issue that is raised at this point in considering architectural barriers matters is how and when do we recognize that a congressional program has really been a tremendous success.

Because we think that is precisely what has happened. When you look around the Federal world, and I think the same thing is true to a larger measure in the private sector, and in the State and local area of governmental buildings, a veritable transformation has taken place in what is really a very remarkably short period of time, given the nature of the built-up environment.

We think that everybody involved in the design and construction and alteration of Federal buildings is now sensitized to the important issues of accessibility and that we are moving very strongly to accomplish a large degree of accessibility. Our concern with the provision that has been added to the companion bill in the Senate is really in the same area that Mr. Kline has just outlined, that we would be moving from a very fine and solid base that has tremendous and widespread support—a base that provides an ambitious but feasible program—into an area of trying to achieve the virtually impossible in terms of very sweeping requirement for total accessibility.

That is where we think we are today. We believe that it is really more than a matter of "if it ain't broke, don't fix it." Instead it is a matter of, when it is working well, leave it in place and continue to support it, and that is what we strongly recommend to the subcommittee today.

Thank you very much.

Mr. **Young**. Thank you, Mr. Craig.

Ms. **Hale**. Like my distinguished fellow panelists, I thank you for the opportunity to testify on this bill and this important issue. Again, in the interest of time, I will summarize my remarks to say that HUD has been as involved with accessibility as the other standard-setting agencies during the time we have been operating under Architectural Barriers Act standards.

We, too, think that we are moving along in the appropriate directions, and want to continue those efforts as they are currently ongoing.

We share the concerns expressed by the previous two speakers with certain definitions in section 307, with the modification and waivers provision, and with the scope the provision for accessibility requirements in any contract for alterations, because it would seem to entail the modifications to the entire building not just the part being modified.

That is particularly important to us, because of our public housing projects. If we do one modification in a modernization program, does that mean the entire building would have to be made accessible? How large is the scope, and how costly could it be to the Federal Government?

We are also concerned about an additional area that may not be as important to some of the other agencies but from our standpoint is significant, and that is the reference to acquired properties.

HUD acquires properties through default in our FHA programs. These are primarily privately owned residences we take into our inventory because of adverse situations under which the homeowners are unable to maintain their mortgages.

We follow an expeditious process to turn those buildings around, particularly those individual privately owned residences, which go back out to the home buying public. We certainly do not want to see this section, as it is currently written, apply to the acquired properties. We do not believe it should have any relevance to that FHA program at all. We want to be sure those kinds of technical problems do not inhibit the operation of our very fine FHA program.

We have been asked also to address the costs, from HUD's individual perspective, of these kinds of changes, particularly the expansion of fully accessible above ready access. From our own program implications, we feel they could add as much as 16 percent to the cost of any new construction, and as much as 64 percent to the modernization programs, of our public housing program.

We believe, along with the Postal Service, that "if it is not broken, don't fix it." We are working toward the same mutual goals as this committee and if the Barriers Act is to be amended we want to be sure we are doing it in a comprehensive way and not in a piecemeal fashion.

I would be happy to respond to any questions.

Mr. YOUNG. Thank you very much.

The last witness would be Mr. Tom Kenney, Chief of the Building Technology Section of the Office of Chief of Engineers.

Mr. Kenney.

Mr. KENNEY. Thank you, Mr. Chairman.

I am Thomas Kenney, Chief of the Building Technology Section, Office of the Chief of Engineers, and although that falls under the Department of the Army, I am here today to represent the Department of Defense.

I will briefly summarize my statement, because most of it has already been mentioned. I am here more in a supportive role to the other standard-precribing agencies.

I feel we all have the same position on section 307 of S. 452. Like the other agencies, the Department of Defense has had accessibility standards well before the Barriers Removal Act was ever issued, and we do feel strong about provisions for the physically handicapped, especially in any public situations where there might be public individuals who have to enter our facilities for whatever reason, or where we might in turn be hiring civilian employees.

The three major concerns we have with section 307 are that (1) the term fully accessible that was mentioned quite a few times today already, even by the AIA representative, as interpreted would cause extreme problems for our military construction programs. We feel our cost would escalate between 2 and 3 percent annually on our construction programs if we had to make the entire building accessible, which means every doorway, every toilet room, every elevator.

Currently, we make every important element, or elements that require accessibility for a public individual, accessible by at least one accessible route. It may be that a fully capable, non-handicapped person, may access that space by two or three different routes. In our case, we always stuck with the ready access statement or ready accessible, and we feel that should remain.

Another problem is with waivers. Though we have not issued many waivers over the years, I think our average is about the same as GSA, approximately six a year. We are very strict with issuing waivers, and this clause to limit all waivers we feel is a little harsh.

And then, the final point concerning "any contract," which we interpret to mean that if we intend to upgrade a facility due to electrical requirements, minor electrical upgrade, for which we would not normally upgrade the building for accessibility standards since we are not doing that type of work, under this clause of "any contract" we interpret that to mean we would have to upgrade the building to fully accessible standards. We have not done, even attempted to do an estimate on that part, but that could dramatically increase our program budget-wise.

I would like to thank you for the opportunity. If there are any questions, we will certainly be glad to answer them in any fashion you would like.

Mr. **Young**. Let me try this first question and then the panel could, if they felt they would like to come in, and we will probably direct this to Mr. Kline.

The subcommittee, for some time has tried to get hard information for the cost of accessibility, particularly in light of the minimum guidelines.

Our informal estimates have ranged from a high of $800 million to as low as $300 million. Could you explain why this difference? What do you now estimate for a cost figure, based on minimum guidelines?

Maybe we had better submit some of these questions.

Mr. Kline, the subcommittee has tried to get the information and estimates have gone from $800 million down to $300 million. What is the difference, how can you explain this type of difference?

Mr. **Kline**. Mr. Chairman, we are conducting, completing an analysis now, which we would like to submit that to you. We are trying to be very conservative in doing this. The thing you will find bothersome, the number now is probably going to be a figure above $800 million, but we would like to give you the methodology and how we have done that, and the other facts that are involved and cover both our Government-owned and leased space as well.

Mr. **Young**. I would assume maybe a lot of these questions at this particular point will be oriented to your final determination on that.

A question that I have, just from my own perspective, and I know you control a lease in my district office, and I want to stay in this building, but the space was limited downstairs, and so we have to move upstairs.

I wanted to stay in the same location for a whole bunch of reasons—accessibility to the public, close to the airport, all kinds of things like that—but I made sure that we had accessibility to the residents of my district and just happened to find a nice staircase that would work out.

How is that generally handled by most of the congressional offices? Are you familiar with that at all?

Mr. **Kline**. Yes, sir.

Mr. **Young**. You have 535 of us. We are not all as blessed as our two Senators to be in the old post office, the renovated post office in downtown St. Louis.

Mr. **Kline**. We generally certainly follow what you have just said, that your only preference is to be in the best location to serve the people in your district. We try to honor that in all cases and try to be very sensitive to it.

Mr. **Young**. It was really getting close trying to work it out with the owner of the building.

Mr. **Kline**. And a lot of the—I would say a large majority of Congressmen are in Government-owned buildings rather than leased buildings and that sort of eases some of these problems this way.

But in cases where circumstances dictate we have to go another route, we do it.

In relation to accessibility, of course, and as you just expressed, you are very sensitive to make sure that your constituency is accessible to you and we try to do the best we can, that we are meeting our objectives under this program in making that available.

Mr. YOUNG. You do look at it, I assume, most of the leases.

Mr. KLINE. Yes, sir.

Mr. YOUNG. I see most of the staff back there shaking their heads.

Mr. KLINE. Yes, sir, in each and every lease that comes up, it is a consideration. I do not want to mislead you into believing, though, against a criterion called full accessibility, that these kinds of properties exist.

They simply don't. You find that lessors are interested in meeting local code requirements. In terms of our options of where we can go, we have got to be sensitive to that, but we have had cases where we put additional requirements on them to meet what we regard as a reasonable requirement for accessibility.

Mr. YOUNG. You won't believe, if you ever get to St. Louis, you ought to come to my office and take a 1⅞ elevator up, and there is about one-eighth of a floor, there is no way there—I don't know, I guess you got it at a bargain basement store.

The elevator was maybe a surplus elevator—this guy put it in there. There happens to be a nice stairwell.

Mr. KLINE. With the elevator, you have problems——

Mr. YOUNG. It doesn't go all the way up to the second floor. You can imagine the problem I had there. I knew if I was going to be chairman of the subcommittee——

Mr. KLINE. I goofed in St. Louis. I have been there and looked at some of the other properties you mentioned. I didn't get into your building. I guess I should have done that.

Mr. YOUNG. Don't be upset. There is a handicapped access down at the other end of the corridor.

Mr. Shaw.

Mr. SHAW. Mr. Chairman, I had a question that I was going to ask, and that was, what do you understand is the difference between readily accessible and the proposed term, fully accessible?

Rather than doing that, I think what this committee should do is ask the GSA to inspect a building that is geographically accessible to this committee, right here in this area, and prepare a list of things that would have to be done to that building to make it fully accessible and take the committee on a tour of the building.

Now, I want you, in all fairness, to pick a building that would really comply, and right now would be readily accessible, would want you, and tell you what you would have to do is make it fully accessible, include some prices.

I would ask you not to tilt the scale unfairly. I think all of you have been pretty uniform in your testimony. But I would want to be sure that we are reasonably looking at the term readily accessible to see if there is some modification we should make or see if what we want to do is accept the term fully accessible.

I can't think of any better way to do it than precisely doing that.

Mr. KLINE. That is, sir, a great way to do it, because it is what we have done. We have picked out a number of buildings and against what we found in there, we have built our estimates up on that kind of basis, using real-life cases.

If the committee would like to be in on the selection of buildings that we are using, so we are not stacking the decks to make our own case, we would be willing to do that, and offer up options that way, and you make the selection.

Mr. SHAW. I think either way is fine, you know right well that if you have stacked the deck, there are a lot of folks out there who are going to point that out. While you are trying to make your case, they are going to make their case to the extent of how dishonest you were.

Mr. KLINE. Yes.

Mr. SHAW. I am sure you will be fair for that reason as well as your own credibility. No further questions, except I will be looking forward to seeing the result of that.

Mr. KLINE. If I may ask you, are you satisfied with the accessibility in your building in Fort Lauderdale?

Mr. SHAW. We went through this back—I remember we did this with our own city hall in Fort Lauderdale many years ago, making it accessible. We never really considered the term fully accessible. I am not sure I know what that means.

If it means every toilet stall, every water fountain, every door, everything altogether, I can see some problems.

If it means simply making it possible without an extraordinary amount of inconvenience for the handicapped to get around and use a public building, then I certainly sympathize with those goals and tend to support it.

Mr. KLINE. The reason I asked is that I have been through your building and I thought it does meet the test.

Mr. SHAW. There are ramps. Of course, our building is not in many ways really fully accessible to those who do not suffer impairment. It has a lot of other problems, other than design flaws, but I think it does substantially comply.

As far as I know, it would be readily accessible to any of the population, but I don't know, when you start talking about fully accessible you are talking about not only people who first come to mind, those who must use ramps, but you have to consider the blind, the deaf, other types of impairments.

I am not sure that was really thought about in drafting the wording that we have. I would want to be sure that in formulating whatever bill we do, whether we do it in the Architectural Barriers Act or in this particular act, that we don't put together something that is going to end up with a nonsense result.

Mr. KLINE. We will be happy to submit that.

Mr. YOUNG. Two real quick questions.

Are leased facilities in the Postal Service required to be accessible to the handicapped?

Mr. CRAIG. It is our view the leased buildings have the same requirements that the owned buildings have, that the Architectural Barriers Act is essentially prospective in operation and that it says that when you design or construct or alter a feature for which you have a handicapped accessibility standard, that you do it in accordance with that standard.

Now, when we lease a building, we strive to find a building that is already accessible to the handicapped. Frequently, however, as I am sure you can understand, we are staying in an existing post office. Many of our post offices are leased, and we often simply stay in the existing facility. We consider that to be the same kind of situation as if we were staying in an owned facility, which is, if we don't plan to do any alternations at the facility, the fact that we renew our lease does not mean that we have to go in at that moment and do a retrofit for accessibility.

So, that is essentially our view, that the leased buildings are covered by the act, but that that coverage applies as we do alterations, designs and constructions.

Now, we do construct a number of new buildings for leasing. We develop plans, we deal with the private sector, and they produce buildings for lease to the Postal Service. All of those are developed from the ground up with all the accessibility in them that would be built into a building to be owned by the Postal Service.

Mr. YOUNG. I am sure Clara Barton used the Post Office in Burke, Va., where we reside, two or three nights a week. That is something out there. I am not going to comment.

Mr. SHAW. Is the accessibility for the handicapped also for the employees as well as the general public?

Mr. CRAIG. Yes, whenever we have a situation, for example, a building that is not accessible because it was built many years ago, and we have handicapped employees, we would, of course, make the changes in the building to provide for the required accessibility.

Mr. YOUNG. I will look around the back end of the Burke, Va., Post Office facility to see. I don't think it happens in the front.

Mr. CRAIG. The issue, of course, would be if we do have a handicapped employee there. If we do not have handicapped employees, we would not undertake a retrofit normally for those features.

Mr. SHAW. I would think that some of the duties such as sorting things like that would be an ideal job for a handicapped person.

Mr. CRAIG. That is true.

Mr. SHAW. I guess my concern over your last statement would be whether there would be any hesitancy to hire a handicapped person knowing you would have to go through retrofiting.

Mr. CRAIG. We have a strong program for equal employment opportunity and affirmative action for handicapped people. We have a real effort in that area, and it would be my judgment that that doesn't enter into the thinking. We are glad to go ahead and make these changes when we are able to find a handicapped employee to work in a facility.

Mr. SHAW. Thank you.

Mr. YOUNG. One more short again, then Mr. Clarke.

Mr. Kline, I guess the Department of the Interior, in their parks, whom do they report to, do you know that question on accessibility?

Mr. KLINE. Yes, sir, this is under their own jurisdiction for construction. They have their own responsibilities to meet accessibility requirements as well as the "GSA accessibility standard."

Mr. YOUNG. Are they on the same Federal panel that a lot of——

Mr. KLINE. On the Barriers Board, they have membership there along with us. Roger Craig and I are both members of that Board, and I would imagine there are about 11 other major departments that are on this Board.

Mr. YOUNG. I want to ask the staff to take a look at that question on Interior.

Mr. Clarke.

Mr. Clarke. Mr. Chairman, I don't have any questions at this time, in view of the late hour, except I just wanted to ask you a question.

If your building is so messed up, have you ever considered moving?

Mr. Young. The answer was "Yes," but they were able to find a floor at the end of the building where there would be seven-eighths elevator. At the opposite end was a fire door and all that, so they were able to put a lift in there, but it was very close and the costs were getting very close to being prohibitive and this thing just happened to work out, the answer is we would have to move. I don't think there is any question about it.

Mr. Clarke. Thank you.

Mr. Young. Thank you all very much, we will be sending additonal questions for you to respond to for the record.

The subcommittee will stand in recess. Thank you.

[Whereupon, at 1 p.m., the subcommittee was adjourned.]

[Subsequent to the hearing, additional questions were submitted to GSA by Representative Young, and Representative Shaw. The questions and responses follow:]

General Services Administration
Public Buildings Service
Washington, DC 20405

PB+G / Architectural Barrier

MAR 8 1984

MAR 12 1984

Honorable Robert A. Young
Chairman
Subcommittee on Public Buildings and Grounds
Committee on Public Works and Transportation
House of Representatives
Washington, DC 20515

Dear Mr. Young:

The Administrator has asked me to reply to your letter of February 10, 1984, concerning the Subcommittee on Public Buildings and Ground's questions relative to the Architectural Barriers Act of 1968, as amended.

Our answers to these questions are enclosed. I hope this information is helpful to you.

Sincerely,

L. L. MITCHELL
Commissioner

Enclosure

GENERAL SERVICES ADMINISTRATION

1. Concerning the draft standards which the four standard-setting agencies have been working on, I understand that GSA took a lead role in this effort.

A. How long have the agencies been working on the standards?

GSA invited the three other standard-setting agencies to join in preparation of a single Uniform Federal Accessibility Standard (UFAS) at the March 11, 1981, meeting of the Architectural and Transportation Barriers Compliance Board (the Board).

Agency standards under the barriers act must meet the minimum guidelines and requirements set by the Architectural and Transportation Barriers Compliance Board under the 1978 amendments to the Rehabilitation Act of 1973. Since those guidelines and requirements were first adopted by the board in 1981, then modified in August 1982, why has it taken so long to develop standards which comply with the guidelines?

The document is a lengthy, highly-detailed design standard. During the initial drafting eleven agencies participated in its Task Force in response to a request of Mr. David Stockman.

An initial draft was originally prepared for the Federal Register in spring of 1982, but was withheld because of the continuing evolution of the Board's "Minimum Guidelines and Requirements for

Accessible Design" (MGRAD). Following the August 4, 1982, publication of the MGRAD, the staff of the four standard-setting agencies made conforming corrections to the earlier draft and began agency clearance procedures. The document was forwarded to the Office of Management and Budget (OMB) in early December 1982. Following its release by OMB, it was published as a proposed standard for public comment on April 29, 1983. Responding to Senate and House requests the comment period was extended to August 22, 1983.

Despite the collected input of multiple editors, the April 29, 1983, draft contained numerous discrepancies from the MGRAD. Many of these resulted from converting the UFAS back to the original American National Standards Institute Standard A117.1-1980 (ANSI) format.

Concerned with these discrepancies and in response to a unanimous Board resolution, we reestablished close relationship with Board staff and attempted during the fall of 1983 to achieve final closure. All items were resolved or deferred to staff resolution by the Board at its November 1983 meeting except for four issues awaiting a legal opinion and vote at the March 13, 1984, meeting.

B. When do you anticipate the draft uniform standards will be final and published in the Federal Register?

We believe publication of a final UFAS will follow shortly after the March 1984 Board meeting.

C. I believe a comment was made during the hearing that GSA and the other standard-setting agencies worked closely with the compliance Board to develop these uniform standards?

Staffs worked together closely during early development stages and again during the final resolution of public comment stages.

Was that close working relationship from the start of efforts to develop the standards, or was it more recent?

As stated above, the relationship was not continuous. The four agencies worked alone during agency clearance stages, awaited OMB approval without Board input, and in the interest of time worked alone in the conforming of the first draft of UFAS to the final MGRAD.

In candor, because of our firm desire to return the UFAS document to the original ANSI format in use by most building codes rather than that of the MGRAD, all work relationships were not as close as all participants would have desired. Recent working relationships have been close.

Will the uniform standards be subject to final review and/or approval by the compliance Board.

The Board has already voted to accept staff suggestions generated during Fall work sessions. We have worked closely with Board staff to incorporate those changes and they have been reviewing this work. With the exception of the four issues referred to above, we believe the document has been reviewed continuously.

D. In your opinion, do the draft uniform standards comply with the minimum guidelines? Have there been any problems with this?

Yes, we believe they do comply. There have been problems, mostly reflecting the change in format or attempts to provide further clarification of scoping provisions. We believe these are now resolved.

E. From testimony during the hearings, it appears that heavy emphasis in the uniform standards has been placed on the direct current ANSI standard -- the format and graphics. Why has this approach been taken in view of the fact that Congress, in the Rehabilitation Act Amendments, provided for the minimum guidelines to be the basis for your standards?

It is UFAS that will be used directly by Federal designers and contractors. The ANSI standard is the document used by all model building codes and in one edition or the other, by most state access codes. The MGRAD specifically permitted a change in format in agency standards. Additionally, because the legislation given the Board authority to "...establish minimum guidelines and requirements for standards..." as opposed to authority to establish standards, we believe the format change is not only proper but warranted.

We are concerned first and foremost with communicating with designers and architects. The ANSI standard is already in day-to-day use by by most of them. Our use of its format allows an architect to find a provision on a Federal project being designed on Friday in the same location that he finds the provision on a private project on Monday through Thursday. The use of the industry standard is consistant with Federal policy overall to use industry standards and received only positive public comment. We did not receive a single comment recommending use of the MGRAD format. Instead, commenters ranging from the American Institute of Architects to providers of health care supported use of the ANSI document.

1. Are the format and graphics of the minimum guidelines substantially different from those of the ANSI standard?

Format and graphic style are somewhat different between the two documents. Drawings generally reflect identical information but were drawn by different individuals. The Board's graphics and format were originally prepared by an architect who is now on GSA's staff.

Are they not as good as those in the ANSI standard?

We believe they are as good; and many people believe they are better as graphic presentations; however, they are different. The problem is not which is better, but rather which promotes better uniformity and in turn understanding and communication.

If that is the case, why is it that the minimum guidelines do not carrry the same format and graphics? Surely all of your agencies were party to the development of the minimum guidelines. Could you please elaborate on these observations.

When the MGRAD were first being prepared in Fall of 1979, the first drafts utilized graphics and language contained in the draft 1980 ANSI standard. When ANSI was finally published in May of 1980, it contained a copyright. The Board General Council was advised by the Veterans Administration's attorneys (VA provided administrative support to Board while Max Cleland was Chairman) not to use the ANSI document as published. Since the technical requirements were to be derived from ANSI, Board staff prepared new drawings and text while maintaining the desire to promote uniformity in actual technical content.

Major ANSI supporters, which include most handicapped consumer groups and all major construction groups, have since the beginning continued to press for use of the ANSI consensus standard. This support was again confirmed in our public comment period last summer.

We would be most happy to demonstrate the use of each of the documents at your convenience.

2. Are the ANSI standard format and graphics problem-free or are there likely to be changes in the ANSI provisions in the near future.?

Neither the ANSI nor the MGRAD format and graphics are problem-free. Several ANSI errors were detected during the Board's development of MGRAD. Likewise, during development of UFAS several errors in the MGRAD were detected and confirmed by the Board.

ANSI is now, as part of its normal 5 year update cycle, reviewing its document and considering, among other inputs, UFAS provisions. Given the normal ANSI consensus voting procedures we believe no update will be issued prior to 1985. We further believe some clean-up of graphics and minor format changes may result from this review.

F. Mr. Kline, in his statement, pointed out that the format and graphics of the new 1980 ANSI standards was the document referenced by all of this nation's model building codes and the most widely referenced current standard used in the state access laws.

1. How many States used the ANSI standards format and graphics?

Unfortunately, the wisdom of a single accessibility document within a given state has still evaded most states. Most States continue to have two standards - one in the building code and one in the State accessibility law. Often the standard referenced is different. As of 1983 we believe the following to be correct:

A. Building Codes using ANSI A117.1-1980:

The Uniform Building Code, the Basic Building Code, and the Standard Building Code each adopt ANSI by reference. These codes are in turn used by the following states:

1) Uniform: 18 States (3 more use it in most cities)
2) Basic: 12
3) Standard: 9
39 TOTAL

Other States use their own State written codes, multiple codes, or no code.

B. State access codes referencing ANSI A117.1:

1) ANSI A117.1 - 1961(R1971): 26
2) ANSI A117.1 - 1980: 19

2. How many states use standards unique to their own state?

To our knowledge, the following states have unique illustrated access standards although in several cases the states are also covered by ANSI:

California, Illinois, Michigan, Massachusetts,
North Carolina, Pennsylvania, Washington, and Wisconsin.

3. Do you know whether many other states have adapted their standards to reflect the Board's minimum guidelines?

Four States use the MGRAD as some part of state access requirements, three of whom also use the ANSI A117.1-1980 standard in their building code.

G. When these uniform standards are final, will every agency be using the same exact standards?

Every agency will be covered by UFAS. It is our hope that other agencies will not adopt another layer of "second tier" standards that apply only to their agencies. Our inclusion of special use sections is an attempt to reduce the need for second tier standards.

Will there necessarily be some differences due to the unique situations each agency might have? Can you give some examples?

Projects with unique situations should have more stringent standards specified in the building program. For example, a Veteran's Administration facility designed for spinal cord treatment may require a higher than normal accessible parking space requirement.

H. Will the uniform standards cover structures which provide public access to transportation systems, such as subway stations, airports, etc?

UFAS covers all clauses of construction where handicapped people can reside, can be employed, or where they are open to the public. Alteration and addition requirements mirror the MGRAD requirements and do contain measures of "structural impracticality." There are no blanket waivers.

(If not), why not? Are they not covered by the barriers act?

See previous question.

2. I understand that for several years the GSA accessibility standard has exempted leased buildings from the standard if accessible space is not available. Can you please comment on this observation?

GSA aggressively attempts to procure fully accessible space. The most accessible space offered under a particular solicitation for offers must be leased in accordance with our regulations irrespective of cost. To lease less than the most accessible space offered requires a waiver from the Administrator (a review of our waiver file has revealed that no waivers have been ever issued for leased space).

However, the Federal Property Management Regulations (FPMR 101-19.604e) do provide an exception that permits leasing non-accessible space if no accessible space is offered. This exception recognizes the realities of the market place. When leases are negotiated we attempt to negotiate accessible features into the lease. When leases are for inaccessible space every effort is made to meet accessibility requirements.

A. What percentage of buildings leased by GSA throughout the country are not accessible? What is the average length of a lease for a building that is not accessible?

We cannot give a definite percentage for your question. We believe that most of our leased space is "essentially accessible" (ie entrances, toilets, elevators, and drinking fountains). Few leases comply totally with our standards because they were constructed under local building codes. Most privately funded buildings are not covered bystate access laws and local building codes have not historically applied the full provisions of the ANSI standard to privately funded construction. Accordingly, while we will lease the most accessible space offered in any given solicitation, the final lease can only reflect what was offered in the area. Note further, that we have often been required to site facilities in locations beyond our conntrol (legislative requirements, etc.), thus further reducing the inventory offered. If leases are required to be in older, central city areas, it is more likely that the facility was not constructed to an accessibility standard.

In the future, as more buildings are built under the new ANSI standard, our chances to obtain space in close compliance with UFAS will increase. The average length of leases is now 3 to 5 years.

B. What procedures are in place to ensure that GSA regional offices make bona fide attempts to find accessible space to lease?

Our automated solicitation contains standard accessibility requirements. Whenever these requirements cannot be met, the leasing officer must place a signed certification in the lease file attesting to the unavailability of accessible space. Yearly reports to Central Office in turn advise of these conditions.

3. QUESTION FOR GSA: GAO, among the recommendations in its review report of 1980 suggested that the board, rather than GSA, report annually to the Congress on all waivers of standards. And that the Board rather than GSA, report all Federal activities pertaining to standards issued, revised, amended, or repealed under the barriers act?

A. What is your reaction to that recommendation?

It is doubtful to us that the Board can or will achieve any greater effiencies of reporting than GSA does. As it is GSA and the other aencies that issue, revise, amend, and waive the standards we believe we are in the best position to report on those activities.

B. As things now stand, under the barriers act, has there been any problem with GSA's making of those reports? Do you have any suggestions in that connection?

There have, to our knowledge, been no problems in reporting to the Congress on the above issues. As we do not have enforcement authority over other agencies regarding submission of our required Form 2974, "Status Report for Federally funded or leased Buildings-Accommodation of Physically Handicapped", agency compliance has been less than we desire despite many attempts to improve its submission. Our new revised form provides far better data, more responsive to compliance/oversight activity, but is still only as good as the user.

QUESTIONS CONCERNING IMPLEMENTATION OF THE BARRIERS ACT AND PROVISIONS OF S. 452

1. Section 6(2) of the Barriers Act requires that each of the standard-setting agencies establish a system of continuing surveys and investigations to ensure compliance with the standards.

A. Do you have such a system in place?

Yes.

B. What does your system consist of?

The system involves design review of all designs by regional GSA personnel, plus continual update of GSA's computerzied building profiles. Major facilities are reviewed also by Central Office. With the exception of maintenance items, once an accessibility feature is installed, it is permanent. Accordingly, unless retroactive provisions are included in standards, the need to resurvey a facility over and over is unnecessary. We did perform a major survey in preparation for the GSA Voluntary Retrofit Program to identify needed corrections.

C. If you do not have such a system, why not?

Not applicable.

D. Do you maintain inventories of your buildings such that you know which buildings come under the Barriers Act and at what level of accessibility those buildings might be?

As we stated above, our computerized Building Profiles contain a ten item checklist regarding accessibility. The entire PBS Information System is under agency review and we intend to improve the accessibility information questions as the new system is implemented. The Forms are now somewhat out-dated and we believe the questions themselves to be in need of revision to reflect current standards.

Because of the way the current questions are formated (ie. simple Yes/No questions) it is difficult to ascertain the level of accessibility. The new system will rectify most of these issues. However, it must be noted that no alpha/numeric system will totally present the accessibility status of a building. Graphic data is necessary to totally communicate design information.

If not: What would it take to develop such an inventory or to include accessibility as part of any existing inventory?

See above.

E. Do you know how many of your buildings do not come under the Barriers Act provisions? Under what circumstances are such buildings not covered by the Architectural Barriers Act?

2037 owned buildings were built or acquired prior to issuance of GSA accessibility requirements 163 new facilities have been built or acquired since then. However, a large portion of our facilities have experienced some manner of alteration or renovation that would entail partial coverage of the Architectural Barriers Act (ABA).

Buildings that predate the issuance of design standards that are not altered in aspects susceptible to accessibility improvement are not covered by the ABA. Very few facilities fit totally in this category.

2. Do your agencies receive complaints directly from the general public concerning inaccessibility to certain buildings?

Yes.

Please describe what procedures have been established in your agency for daling with such compliants?

Typically complaints from the general public are received by the Buildings Manager of a facility. Very few have been received directly in the Central Office. The Buildings manager refers complaints involving construction to the regional Repair and Alteration Division of the Public Buildings Service and includes his evaluation of the complaint. If necessary corrective measures are estimated to cost more than $10,000, the regional office schedules them for design and bid according to standard procedure. If the work is estimated to cost less than $10,000 and believed to be within the capability of the Buildings Managers forces, it is returned to him for execution. All work is designed to conform to GSA standards.

3. About how many such complaints are received by your agency each year?

Because most minor compliants are handled directly by the region or buildings managers, we maintain no formal control record-keeping.

Have the number of complaints dropped in recent years? Or increased?

Major problems have been reduced since completion of the Voluntary Retrofit. Remaining minor complaints are handled as specified earlier and based on an informal polling of our regions appear to be much fewer in recent years in owned space. Leased space, reflecting our lack of total control over a facility in which we may lease only a small portion, continues to experience some complaints.

4. Are such complaints forwarded to the Compliance Board for any determination on whether there is a violation of the Barriers Act standard or for advisory purposes? If not, why not?

Complaints are not forwarded to the Board. Necessary construction is undertaken in conformance with the GSA Accessibility Standard. We believe this is appropriate in that we authorized the standard initially and have rarely had a difference of opinion on its interpretation with the Board (note that of nearly 1,000 complaints received since the Board's inception, GSA has only been involved in three suits reflecting differing interpretations, and only one in which the judge ruled against our facility). Our primary conern is to rectify any situation brought to our attention.

5. The ATBCB has issued rules setting forth procedures to resolve with the agencies those complaints received by the Board. Are such matters resolved amicably in most instances?

As indicated above, most complaints are resolved amicably.

Have there been any unusual problems?

Previous problems regarding an absence of formal closure or resolution letters from the Board now appear to e resolved. Also, working with the Board in committee meetings, the resolution time frames have been adjusted to facilitate more meaningful responses to Board complaints.

6. In 1980, the GAO did a follow-up review of an earlier review and report of 1975. In general, GAO apparently found progress had been made with building accessibility since their 1975 review, but more in a good faith effort than a systematic and coordinated effort under the law. Although further progress has undoubtedly been made since then, there is one particular GSA recommendation on which I would like you to comment.

GAO said that some confusion existed between the Compliance Board and some agencies because the Barriers and Rehabilitation Acts overlap functions without clarifing respective leadership and authority roles. The recommendation was that the Barriers Act be amended to establish the Board as the principal authority to provide leadership and ensure compliance. Further, that HUD, DOD, GSA and the Postal Service consult with the Board and obtain its concurrence to be sure standards conform to the guidelines and requirements.

For some time the standards published under the ABA and those published in response to the Rehabilitation Acts were different. Thus solutions proposed for one problem may not have found acceptance under another. It is our opinion that the Department of Justice model Section 504 regulation will do much to place all Federal accessibility efforts on a single footing by proposing use of UFAS as the technical basis for Section 504 construction efforts. Further, as the Board has been closely involved in the final resolution of UFAS and UFAS is based on the MGRAD, concurrence has been effectively achieved. Again, we must emphasize the importance of the UFAS format, especially for Section 504. Since Section 504 affects facilities constructed under local building codes, use of the ANSI format and graphics will reinforce accessibility efforts while reducing compliance costs. Designers will be able to look for Federal solutions in the same area of the standard that they find them in their other design efforts.

7. In S. 452, Section 112(2), the term "physically handicapped person" would mean any individual with a physical impairment that precludes such person's use of a building to the same extent that an individual with unimpaired mobility can use such building

The definition seems to describe a physically handicapped person in terms of a building and is geared toward mobility of handicapped individuals.

(1) Do you have any particular problems with that definition?

Yes. It implies that changes to a building or facility can make a person "un-impaired" (ie....to the same extent). This will always be impossible. The provision of a ramp adjoining a small set of steps will facilitate accessibility, but will not allow travel as short, as direct, or as rapidly as the stairs. Access will not provide a person's use to the same extent. Even a power-operated door operates slower than an able-bodied person can push a door closer open. For safety reasons such timing will not change in the future. There is also, given current technology, no way to facilitate a wheelchair user's transfer and use of toilet facilities as rapidly as able-bodied users use them. Grab bars and space permit use but they do not provide use to the same extent--similar comparisons abound in the standards.

(2) Do you think it adequately covers barriers encountered by persons who might have hearing and visual problems, or persons with various nervous disorders or other physical handicaps?

The definition does not address the other disabilities you mention.

8. If it were decided to include in the Architectural Barriers Act a definition of "physically handicapped person," do you think it would be reasonable to use language similar to that used in other legislation, such as:

"Physically handicapped person" means any individual with a physical disability which limits one or more major life activity.

Do you have any other suggested language?

Yes. We prefer the definition developed in conjunction with the Board that addresses functional use of a building:

"An individual who has a physical impairment, including impaired sensory, manual, or speaking abilities, which results in a functional limitation in access to and use of a building of facility."

The definition restricts itself to areas in which building design may play a part. But we must question why there is need to include a definition in the Act if such a definition is contained in the standards and appears to have general acceptance?

9. The definition for the term "fully accessible" as contained in S. 452 would, according to your testimony, be susceptible to broad interpretation and greatly increase the cost of accessibility to the Federal Government. What would your reaction be to language defining the term to mean: The incorporation of such features and equipment which make a building or facility usable by phsically handicapped persons to the same extent as non-physically handicapped persons and, in a building of historic, architectural, or cultural significance, the incorporation of such features and equipment in such manner as to be compatible with the significant architectural features of the building to the maximum extent possible.

Do you think that would be a workable definition?

No. We believe the current standard of "ready access and use" to be an excellent solution. To demand use "to the same extent" could easily mean requiring every toilet stall in a toilet room to be accessible so as to never require a person to wait. Given that less than 1/2 of 1 percent of the American population uses wheelchairs, this would be an extremely costly provision (Note that even requiring at least one fixture in a toilet room to be accessible over represents the wheelchair users presence in the population by 40+ times).

We further believe it prudent to allow the new UFAS to take effect and to achieve national uniformity in standards before assessing it to be inadequate. We are sure that it provides a very high standard of accessibility and it is cost effective. To change the definition now would set the acessibility movement back 5 to 10 years and would achieve no measurable gain, only expense. We would be happy to discuss UFAS with the committee in detail and explain the rationale between any provision at which you have question. We are quite proud of this document and its consolidation of all Federal efforts.

10. If we were to decide that some definition for either the term "fully accessible" or "readily accessible" should be included in the Architectural Barriers Act, do you have any suggestions for language to define these terms?

The current UFAS draft requires 84 pages to define how to achieve "ready access and use" in such terms that a designer can plan for it. Accessibility is a concept defined by literally hundreds of details, many of which depend on fractions of an inch. Taken in its total, we believe the standard provides an excellent definition of ready access and use while accommodating the realities of the construction process.

QUETIONS RE WAIVER AND MODIFICATION PROVISIONS

1. S. 452 would tighten agency use of the waiver and modification provisions of the Barriers Act. From your prepared statement, you apparently do not believe this power has been abused in the past and, in fact, is used only on a very few occasions.

Could you provide us with figures reflecting the number of times your agencies have waived standards or modified them?

FY 77	2 granted, 1 temporary
FY 78	4 granted, 2 partial, 1 temporary
FY 79	1 granted
FY 80	4 granted
FY 81	5 granted
FY 82	7 granted
FY 83	3 granted

How are waiver and modifications currently handled by your agencies and for what kinds of situations?

Waivers and modifications are analyized for factual content and options available by technical staff and recommended options submitted to the Administrator for his decision. One recent waiver involved a railyard pedestrian overpass that would have involved 400 feet access ramps at each end that would be nearly impossible for a wheelchair to execute, in turn leading to a 1000 feet long natural grade rising 100 ft. Clearly, to build a overpass that would comply with the letter of the standard would do nothing to assist accessibility. Other waivers have involved such items as the direction of a door swing in a patient examining room.

Because a waiver or modification is theoretically required for such issues as a door jamb that is only one or two inches short of standard, and because the process is naturally burdensome, we believe the system invites non-compliance and will continue to do so. Compliance in facilities which we own and operate is largely attainable, but it is safe to estimate that given the number of projects constructed by agencies beyond our direct supervision that hundreds of required waivers have not been even requested. As access standards become increasingly more detailed, with tolerances of 1/8" here and 1/4" there, modifications will become more and more necessary to meet field conditions and likely more and more ignored. While we have attempted to provide maximum design freedom in UFAS, a better means of achieving informed decisions regarding "equivalent facilitation" needs to be available to field and design personnel.

2. S. 452 would limit action to waive a standard to a building to be leased (other than a building to be constructed for lease), and where the waiver is necessary to meet an emergency situation.

Have the waiver provisions been used in the past by your agencies in connection with leased buildings?

Because the FPMR has allowed exceptions to accommodate market conditions, we have not issued a waiver regarding leased facilities. Note, however, that under our regulations a waiver is only required if we lease a less accessible facility than the best offered.

Your prepared statements reflect that limiting the power to waiver or modify standards would create problems with your construction and alteration projects and would be more costly.

Would you elaborate a bit on this and provide some examples of the kinds of problems that might be created and estimates of increased costs?

Not all building conditions may be foreseen by design standards. Buildings represent millions of parts coming together in one unit at one point in time. Each is unique. Each is on an individual site, different from other sites. To suggest that waivers and modifications not be available for new construction will raise costs to a level we cannot begin to estimate.

As an example, we can use the Rayburn House Office Building. The West Courtyard has 3 entrances that enter from adjoining wings essentially at grade. However, to reach the street, two long series of steps must be negotiated. To be fully accessible, two separate elevators would have to be installed to service this courtyard that currently receives very little traffic on this route. These elevators could easily cost $300,000. The courtyard is now readily accessible from the main building. Because of the steep slope of Capitol Hill and the necessary garage requirements under the courtyard, a strong argument could be advanced in support of a waiver for the street entrance to the courtyard. In alteration projects we are often confronted with existing structural systems that preclude relocating elevator shafts, stair towers, floor levels, etc., to accommodate strict interpretations of the standard. To disallow waivers or modifications could cause agencies to cancel life safety, energy enhancements, and similar retrofits because associated strutural modifications to effect accessibility could place the project far over budget.

4. Are the waivers and modifications of your agency standards forwarded to the Compliance board for a review of findings of

fact which was a function assigned and Board under the Rehabilitation Act, as amended in 1978?

We have not forwarded waivers to the Board prior to granting or denial as part of our process. We have understood the language of the 1978 Amendments "...and insuring that all waivers and modifications of standards are based upon findings of fact and are not inconsistent with the provisions of such Act and this section," is oversight and review in nature as opposed to a procedural requirement. Our waiver file is now and always has been open to Board inspection and review.

QUESTIONS CONCERNING THE COST OF MAKING BUILDINGS ACCESSIBLE

1. For some time, this Subcommittee has tried to get hard information about the costs for accessibility, particularly in light of the minimum guidelines. Informal estimates have ranged from a high of $800 million to as low as approximately $3 million. Can you explain why this difference?

The $800 million estimate referred to was based on the January 6, 1981, MGRAD (subsequently amended) and the then Board General Counsel's opinion on the record that the MGRAD would apply to every single unit of housing constructed with HUD funds. This would require the installation of elevators in garden apartments, and wheelchair lifts in 2-story townhouse. Based on 1979/1980 HUD construction costs this produced cost increases of 10 percent in garden apartments and 24 percent in townhouses.

Comprehensive modernization increases were calculated at 64 percent. When these were applied to total inventories they produced costs in excess of $600 million.

Similarly, no exceptions were provided for structural impracticability such as would be experienced in subway renovation. At a time where elevators in subway stations average close to $1 million each, work planned at that time would have cost 3 cities more than $55 million. Other costs made up the difference, however, repair and alteration costs and capitalized maintenance were not included due to difficulty in estimating. Costs were based on standard commercial construction prices. Estimates we have seen in the past that approach the lower $3 million dollar figure you have mentioned generally presuppose voluntary labor furnished by community groups or are based on far different, older access standards with much less stringent requirements.

(a) What do you now estimate for a cost figure based on the minimum guidelines and/or the uniform standards as you have presently drafted them?

We do not have a cost estimate for the MGRAD and cannot recall that any formal estimate was ever published as part of their rulemaking.

We believe GSA's portion of those costs to be significantly lower than the initial draft. Because our standards directly reflect the costs associated with the MGRAD and because we cannot affect those costs, no estimate has been prepared for the UFAS. We believe the new construction costs for standard office building to be very close to those of our existing standard. Alteration and addition costs must be modeled on a large sample to assess their impact.

(b) Since the minimum guidelines -- and presumably the uniform standards -- contain sections yet to be completed pending further research, are the cost figures presently estimated likely to be considerably greater?

We cannot estimate most costs of reserved sections of the minimum guidelines at this time. We do believe that the provision reserving exterior door opening faces could easily add in excess of $1000 to every exterior door if the final number is set so low as to require power operators.

Would you elaborate on those sections expected to be included in the minimum guidelines? Will the uniform standards be amended to reflect them? Are there particular prblems with these sections?

We already include the ANSI provisions regarding signage. This is consistant with existing GSA standards. We believe the Board will also reinstate this provision in their MGRAD.

Our standards will be updated as required to conform with law. We have little problem with provisions based on sound research. As Board members, we will continue to oppose any provisions envisioned by the MGRAD that do not reflect cost effective analysis and sound research methodology.

2. Your statements reflect that the provisions of S. 452 would be very costly. Do you have estimates as to how much more costly?

As drafted, we believe S. 452 would be extremely costly for GSA. We believe first year cost to GSA for items which we can currently define to be in the range of $1.08 billion dollars. Costs for the first five years to total $1.67 billion. Recurring lease costs could exceed $80 million per year. None of these figures include capitalized maintenance.

3. On what basis are your cost estimates made? What are the problems in determining costs?

Costs were calculated based on cost guides prepared for the State of Maryland by Noakes Associates, Architect of Silver Spring, MD. Several leased buildings and owned buildings were surveyed and plans checked in the downtown Washington, D.C., area. Each building was modeled as "retrofitted" for lease and alteration costs, and modeled as being accessibily designed initially for buildings considered as new construction Costs per square foot were then calculated for each type and multiplied by GSA inventories.

Problems included limited sample size, and type of building encountered. All were central business district type with existing elevators and all were readily (or essentially) accessible. These leases do not reflect typical GSA leases. Approximately 75 percent of our leased inventory is for 10,000 square feet of space or less. We further were inhibited in that we could not really define "full accessibility". If this is understood to include making all parking spaces accessible to vans operated by guadraplegics, then the estimates are far too low. Full scope of coverage was difficult to define and capitalized maintenance was again not estimated.

Larger sample sizes scattered across differing city and suburban mixer would be required for more accurate estimates. Further, these costs are only for GSA controlled inventory and do not cover other property holding agencies.

QUESTIONS RE THE LEASE ISSUE

In the final version of the minimum guidelines the Compliance Board expressed no position on when a leased building is required to be accessible. We are, of course, well aware that the lease issue is currently in the courts.

(a) Why is it not in the guidelines?

The Board reserved its section on leasing pending Court decisions.

(b) How does the ATBCB justify placing the burden of interpretation of the Barriers Act on private litigants?

We cannot answer this question.

(c) Do the draft uniform standards deal with this issue?

Individual standard-setting agency regulations address leasing separately.

(d) How are you currently handling accessibility in leased buildings?

Please refer to earlier questions.

2. Should the appeal now in the courts favor the Mason Rose position on the lease issue? Will your agency's policy concerning the lease of accessible space be changed? With what effect?

As we write this response, we understand the U.S. Cicuit Court of Appeals panel in California has ruled in Mr. Rose's favor. We, however, have been advised by our legal counsel that GSA's compliance with the ABA regarding leased space, is in conformance with the Circuit Court decision and no corrective action is required.

General
Services
Administration
Washington, DC 20405

DEC 19 1983

DEC 21 1983

Honorable E. Clay Shaw, Jr.
Ranking Minority Member,
Subcommittee on Public Buildings and Grounds
Committee on Public Works and Transportation
House of Representatives
Washington, DC 20515

Dear Mr. Shaw:

In your letter of November 9, 1983, you asked a supplemental question to the hearings held by the Subcommittee on Public Buildings and Grounds: "What do you understand is the difference between readily accessible and the proposed fully accessible?"

Accessibility is a term applied to many design features which are specified in so-called accessibility standards. Current standards and Uniform Federal Accessibility Standards, which are to be released soon, are based on the concept of "ready access and use." The following examples illustrate the differences in levels of accessibility.

The current standards require that all common use and public toilet rooms be accessible. Within each toilet room, at least one fixture of each type is required to be accessible. At least one primary building entrance must be accessible if there is only one entrance, and at least two primary entrances must be accessible if there is more than one entrance. All elevators and either all or one-half (depending on standard) of the drinking fountains must be accessible.

By a strict interpretation, "full accessibility" could mean making every exit and entrance accessible, and every toilet stall accessible, requiring an additional 17 square feet of space. It could also mean that all drinking fountains would have two spouts; one raised for people with back injuries and one lowered for people using wheelchairs. To be fully accessible every parking space would require an additional 75 square feet per space.

These examples may seem extreme, but they represent the difference between the ideal world and the practical world. "Full accessibility" as compared to "ready access and use" could mean an enormous increase in cost and a significant expansion of space.

We trust that our comments will aid the Subcommittee in its deliberations and we again extend our offer of any additional assistance that you may feel necessary.

Sincerely,

Ray Kline

Ray Kline
Deputy Administrator

General
Services
Administration
Washington, DC 20405

FEB [illegible]

Honorable E. Clay Shaw, Jr.
Ranking Minority Member
Subcommittee on Public Buildings and Grounds
Committee on Public Works and Transportation
House of Representatives
Washington, D.C. 20515

Dear Mr. Shaw:

In accordance with your request of November 9, 1983, enclosed for the record are the Public Buildings Service's answers to the supplemental questions.

If we can be of further assistance, please contact us.

Sincerely,

[illegible]

Enclosure

EMINENT DOMAIN

QUESTIONS FOR GENERAL SERVICES ADMINISTRATION

Question:

1 (A) Mr. Carmen, in your statement you mention you've made substantial progress in improving the performance and responsiveness of the Public Buildings Service and that GSA has continued to move Federal employees from leased to Government-owned space. My question concerns the procedure the Government uses when vacating a privately-owned building. What kind of and when is notification given to the private landlord that the building will be vacated?

Answer:

1 (A) GSA's policy on notification to landlords of leased buildings which are to be vacated is stated as follows in GSA Handbook PBS P 1600.1A, "Acquisition of Leasehold Interests in Real Property" at Chapter 6-4 b (3), "Termination":

"(a) Expiration. Termination of a lease by permitting its expiration may be accomplished either by withholding a notice of renewal, where further right of renewal is contained in the lease, or permitting the lease to expire without further action at its final expiration date. In either event, the lessor should be notified at least 30 days in advance of the Government's intention to permit the lease to expire."

Question:

1 (B) Does GSA have sufficient grasp of the space needs of the Government to give private landlords a general time period in which the Government will vacate the building? Obviously, this will be of great importance to the landlord who must seek new tenants.

Answer:

1 (B) The space reduction plans required by Federal Property Management Temporary Regulation D-68 require Federal agencies to identify their long-range space requirements. These enable GSA to coordinate agencies' housing and to formulate long-range plans for Federal space within single buildings and within communities. This information provides us with a basis for estimating the time period for vacating leased locations.

In addition, GSA's regional offices have been directed to place increased emphasis on the early identification of ongoing requirements for leased space, thereby allowing timely leasing action or termination. It must be noted that agency missions and the number of personnel requiring housing are never static. Unanticipated and unavoidable changes to agency space needs will necessarily result in occasional delays in notifications to lessors of the Government's intent to vacate leased space.

Question:

1 (C) Excluding unforeseen emergencies, when does the government find it necessary to exercise its power of eminent domain? What is the procedure?

Answer:

1 (C) The exercise of the Government's right of eminent domain is the exception rather than the rule in GSA's program to provide space to its client agencies. This governmental power to acquire a real estate interest in private property for public purposes, also known as "condemnation," is used when the only acceptable space to satisfy a legitimate Government need cannot be acquired through negotiations. The procedures are described in GSA Handbook PBS P 1600.1A, Chapter 9-5, and are summarized below as follows:

When the only suitable space cannot be obtained through negotiations, the regional office transmits a condemnation assembly to the Department of Justice at least 30 days prior to the beginning of the occupancy term requested. The condemnation assembly includes the declaration of taking, title evidence and a contract appraisal of the complete interest to be acquired by condemnation. The declaration of taking includes a statement of the authority under which condemnation proceedings are being instituted and the public use for which the interest is being taken, and authorizes the deposit of a sum estimated to be just compensation for the entire occupancy term into the registry of the United States District Court for the use of the property owner(s). It also includes a summary of negotiations which have taken place with the property owner.

Negotiations with the property owner are to continue until the time of the actual filing of the declaration of taking in an effort to reach an acceptable settlement out of court.

When condemnation is necessary, all affected parties are informed in advance in writing by the GSA regional office of the action to be taken, the necessity therefore, and the procedure the Government will follow in acquiring the leasehold through condemnation proceedings.

The acquisition of the Government's right of use and occupancy by condemnation proceedings, or eminent domain, is accomplished when the Department of Justice authorizes the local United States Attorney to file the declaration of taking in the United States District Court.

Question:

1 (D) Why does GSA find it impossible to tell a private landlord when the government will be out of his building?

Answer:

1 (D) Generally, GSA does not find it impossible to tell a private landlord when the Government will be out of his building. Our stated policy at Chapter 6-4b (3) (a), "Expiration" of GSA Handbook PBS P 1600.1A, "Acquisition of Leasehold Interests in Real Property," is to notify the lessor at least 30 days in advance of GSA's intention to permit the lease to expire.

However, in some cases, an occupant agency's replacement space cannot be completed on time due to strikes, lack of material and other circumstances beyond our control, meaning that it cannot vacate an expiring leased location by the lease expiration date. In such instances, GSA's policy is to keep the lessor of the expiring leased location informed, orally and in writing, of the status of the occupant's moving arrangements.

Question:

1 (E) Do you agree eminent domain is a tool in the government arsenal that should be used sparingly? How and when should it be used? Doesn't the Federal Government owe the private owner certain common courtesies, such as a date the government will cease occupying the landlord's building.

Answer:

1 (E) Yes, we do agree that eminent domain is a tool in the Government arsenal that should be used sparingly. As a matter of fact, we have only had to condemn two leased properties in the last year out of an inventory of over 5,000 leases. It should be used only when space required to satisfy a legitimate Government need cannot be acquired through negotiations. The proposed term of occupancy under condemnation proceedings is included in both the advance notice to all affected parties and the declaration of taking.

Question:

1 In your testimony you state there is plenty of room for improvement in the Public Buildings Service program. What specific legislative improvements do you feel should be made:

Answer:

1 The Public Buildings Service (PBS) should have all the tools available to the private sector to better manage the Government's inventory of public buildings. Some of the tools that we feel are important to include in any legislation to ensure efficient and economic management of the PBS are:

- The retention of an agency user charge for space. We believe such a system provides a necessary discipline and gives an accurate measurement of the true cost of any Federal program.

- An annual authorization process which would be used by both Houses of Congress. This would be the most effective and consistent method for the Congress to communicate its priorities.

- The authority to negotiate options for land or buildings to ensure their availability while the economic and engineering studies are completed. In addition, we need the authority to negotiate purchase options in our leases so that lease payments can be converted to purchase payments when good management dictates.

- The authority to advance design the major projects that we have identified as Federal priorities. Given this authority, we can do a much better job of planning, cost estimating and delivering a quality finished product to our client agencies.

- The deletion or change of the present definition of repair in new legislation. To properly manage our building inventory, ordinary and necessary repairs must be made on a timely basis without consuming the Congress' time for projects of this nature. Finally, we would like new legislation which provides authority to transfer repairs and alterations funds so as to meet emergency repair situations without first obtaining Congressional authorization. This change would prevent loss and further property damage.

Question:

2 Do you feel management of the Government's public buildings should be centralized or decentralized and why?

Answer:

2 We believe that neither total centralization nor total decentralization is in the best interest of the Government. The Administrator of GSA has authority to delegate responsibility for the operation of public buildings. He has exercised such authority and will continue to do so, on a case-by-case basis, when such action is prudent and results in improved management of public buildings.

Question:

3 Under what circumstances do you feel the Administrator's authority should be delegated to department heads?

Answer:

3 The Administrator's leasing and building operations and maintenance authority should be delegated to department heads in instances where a delegation will reduce the amount of money, personnel time and paperwork needed to complete the job in a satisfactory manner.

We feel that leasing authority may be delegated when one or both of the following conditions are met:

(a) The space requested will be wholly or predominately usable by the occupying agency for its special purposes and will not be generally suitable for the use of other agencies, and/or

(b) The space requested is in an area where no other agencies are located and which is remote from the GSA regional office.

We recognize that, in such instances, it may be more cost-effective for other agencies to lease space because they have personnel who are more familiar with special requirements and/or are more accessible to outlying proposed lease sites. Therefore, over the last 4 years, we have delegated blanket leasing authority to the Departments of Defense and Transportation (Coast Guard) for recruiting offices, to the Department of Agriculture for offices in non-major urban centers and to the Veterans Administration for out-patient and medical-related clinics. Over the next year, we plan to study leases executed under existing delegations and, as a result, may make further delegations.

Delegation of building operations and maintenance authority to department heads should occur for single agency buildings, special purpose facilities, and remote locations with a unique program or mission where operational costs can reasonably be demonstrated to be equal to or lower than GSA's costs, and where the best interests of the Government are therefore served. Based on the results of our FY-83 pilot delegations of authority program, we are expanding the program. Agency Headquarters will be notified of our desire to increase delegations and requested to participate in the program.

Similarly, we have delegated to occupant agencies the authority to contract for space alterations up to $10,000 at some locations. This gives agency occupants the flexibility to make minor space adjustments, such as partitioning and electric and telephone outlets, without involving GSA personnel.

Question:

4 What additional tools should be provided to provide more effective management of the Government's publi- buildings?

Answer:

4 We could better manage the Government's public buildings if the restrictions on GSA contracting-out for services were eliminated. In Fiscal Years 1983 and 1984 the Edgar Amendment, which was part of the Continuing Resolution, restricted GSA from contracting-out for guard, elevator operator, messenger and custodial services. These restrictions seriously impact upon GSA's ability to provide quality service to client agencies at a lower cost to the taxpayer.

Experience has shown that, in most cases, these types of services can be performed more economically by contract. This is accomplished through the provisions of OMB Circular A-76, where an in-house estimate is compared with the best bids from prospective contractors who have the proven ability to provide these services. With current emphasis placed upon managing the Government more like a private business, contracting out is the alternative the Government should choose when it is economically prudent to do so. Many buildings management organizations in the private sector contract out for such services for the same reasons as GSA.

The restrictions of Sec. 120 of P.L. 97-377, the Continuing Resolution for FY 1983, which was also made part of the FY 1984 Continuing Resolution, also limit GSA's flexibility to operate efficiently and effectively. Local and national fluctuations in the requirement for various types of services frequently result in a disparity between work to be accomplished and the number of available in-house employees who can accomplish that work at a given geographical location. Precluding GSA from contracting in order to meet these fluctuating needs creates hardship both for GSA employees and for our client agencies. Situations can develop where the quality of service from in-house employees declines as increasing workloads place an undue burden on their capabilities to perform. Poor performance or non-performance of certain services can cause a noticeable decline in the quality of a client agency's work environment. This, in turn, can cause a reduction in the productivity of client agency personnel.

Question:

5. Do you support the time financing provision contained in H.R. 630, as an alternative method of financing the construction of public buildings?

Answer:

5. GSA has been studying the concept of time financing as it relates to the construction of public buildings, and has discussed it with the Office of Management and Budget on several occasions. We recognize that time financing is one possible way to provide additional funding for the acquisition or construction of Government-owned buildings to attain the goal of housing 80 percent of Federal employees in Government-owned space.

Question:

6. In your opinion, why has the Federal Buildings Fund failed to meet its primary objective of providing sufficient funds for new construction?

Answer:

6. The primary reason the Federal Buildings Fund (FBF) is not providing sufficient funds for new construction and the repairs and alterations program is that, since the FBF was established in 1975, it has experienced a shortfall in anticipated revenues of $1.5 billion due to repeated "freezes" and "caps" imposed on the Standard Level User Charge by the Office of Management and Budget and the Congress.

Question:

7. Do you feel it is appropriate that the Standard Level User Charge (SLUC) assessed agencies be determined on the basis of equivalent commercial rates?

Answer:

7. Yes. The objectives of the Federal Buildings Fund enabling legislation (Public Law 92-313) are to:

   Reflect agencies' total program costs in their budgets, specifically their space costs;

   Encourage performance budgeting by agencies by providing dollar incentives for improved utilization of space;

   Establish a businesslike landlord/tenant relationship between GSA and the occupant agencies;

   Enhance Congressional and OMB oversight of space-related activities through the budget process;

Improve building operational services provided to occupant agencies including cleaning, protection, operation, maintenance and incidental repairs; and,

Generate revenues to support new Federal construction and major repairs and alterations programs at regional levels.

The Commercial Equivalent User Charge concept has, for the most part, met these objectives except for its failure to generate sufficient revenues to support the new construction and the repairs and alterations programs as explained in Answer 6 above.

Question:

8. If on the one hand we are telling GSA to charge agencies the equivalent commercial rate for office space in the area and to escalate these rates as the commercial rates increase, and on the other we have OMB and the appropriations committees freezing SLUC increases, why even bother to keep this system?

Answer:

8. The Standard Level User Charge concept is a valid one which could serve the best interest of both GSA and the Federal Government as a whole; however, the Office of Management and Budget and Congressionally imposed "freezes" and "caps" have made the FBF funding levels unstable and unpredictable; thus making planning for new construction impossible. The management of GSA and PBS fully support the continuation of the Standard Level User Charge concept.

Question:

9. If an agency disagrees with the SLUC it is being assessed, can it appeal and to whom?

Answer:

9. Yes. The GSA SLUC rate-setting system, approved by OMB, provides an appeal procedure for redress of SLUC rates if the occupant agency believes them to be inaccurate or excessive. The procedures are specifically addressed in the Federal Property Management Regulations (FPMR 101-21.606) which, in general, provide for an informal and formal process described as follows:

Informal-Occupant agencies are encouraged at any time to discuss SLUC rates and related concerns with GSA regional officials. Virtually all SLUC related problems are resolved in this manner.

Formal-Occupant agencies may file formal appeals when the SLUC rate is in excess of the comparable commercial square foot rates by 25 percent or 50 cents a square foot whichever is greater, or when the quarterly SLUC is in excess of the comparable by more than $12,500. These thresholds are required to eliminate frivolous appeals and to provide a legitimate margin for differences in professional appraisers' judgments.

The formal appeal process provides for three progressive levels of appeal.

Level 1 - Regional Administrator
Level 2 - PBS Commissioner
Level 3 - GSA Administrator

Question:

10. What do you feel the Government's role should be with respect to acquisition and use of historic properties?

Answer:

10. The Federal Government should actively participate in our Nation's efforts to preserve its heritage through the preservation of its historically significant buildings. However, it should only acquire and maintain such buildings to the extent that they satisfy agency program requirements and, in comparison with other alternatives, represent a reasonably cost effective alternative.

Question:

11. Should there be a limit to the number of historic properties in the Government's Public Building Inventory, and how should their acquisition and maintenance be financed?

Answer:

11. The number of historic properties that the Public Buildings Service can acquire or retain in its inventory should not be prescribed by quotas or limits. Rather, when a historic building proves to be the most prudent and feasible alternative for housing Federal agencies, it is our policy and intent to acquire and utilize these buildings whenever possible.

Funding for the acquisition of historic properties now requires a line item be included in an appropriations bill. This method may prove unworkable when negotiating the purchase of buildings from private property owners because of the necessarily long time between project identification and funding. GSA would prefer to have the flexibility of purchasing historic properties when they are available. This could be handled easily by expanding the parameters of the Opportunity Purchase Program to include older historic buildings that would prove to be cost-effective in housing Federal agencies.

With respect to maintenance, we see no reason why the maintenance of historic buildings cannot be funded through the normal budgetary process for the Federal Buildings Fund.

Question:

12. Would you support statutory language mandating that a certain percentage of the funds made available for the construction of new buildings be used for art in the building?

Answer:

12. The General Services Administration supports the incorporation of art work in our Federal construction projects because of its contribution to the overall excellence of design and to making federal facilities more attractive places in which to work and conduct business. However, we do not believe a mandatory percentage should be prescribed by law. Because of the extreme differences in cost associated with the various types of projects, the cost devoted to art on a percentage basis could vary substantially. Therefore, we recommend that our current policy of spending no more than one half of one percent be continued as the most prudent course in ensuring that works of art are included as an integral part of our Federal facilities at a reasonable cost.

Question:

13. Would you review for us the difference between Preliminary and Advanced Engineering and Design? In the long run, which of these do you feel is most cost effective and why?

Answer:

13. Preliminary and Advanced Design are similar in that they each provide for the expenditure of funds to accomplish design prior to going to Congress for construction funding. They both offer Congress an opportunity to examine projects with detailed scope definition and better cost estimates than we can provide today. They are different in the following ways:

Preliminary Design - Provides for the completion of up to 30 percent of design in order to prepare a prospectus prior to going to Congress for additional design and construction funding. The disadvantage of Preliminary Design is that the remaining 70 percent of the design is put in a "hold" position for a year or longer pending Congressional action. During this period, the Architect Engineer (A/E) firm may commit to other projects, lose or change staff, and be unable to complete the design satisfactorily upon Congressional approval.

Advanced Design - Advanced Design is similar to Preliminary Design except that design continues pending Congressional approval and permits the A/E to complete the work without stopping. Funds for design would come from an Advance Design Fund, similar to that of the Department of Defense (DOD) facility program. Final design and detailed cost estimates are available for Congressional review and approval. A disadvantage often mentioned with respect to advanced design is that there would be "design breakage," i.e., projects for which the full design has been accomplished and paid for might not be funded for construction.

However, based on PBS analyses, the cost of design breakage (if any) would be more than offset by the economic benefits of delivering a completed product to the client up to two years earlier. Design breakage of up to 75 percent would have to occur to render Advanced Design disadvantageous to the Government.

Therefore, an Advance Design Fund similar to that of the DOD facilities program is most cost-effective and greatly improves the quality of information available to Congress for decisionmaking.

Question:

14. What factors do you feel should be taken into consideration when locating or relocating Federal agencies?

Answer:

14. The two most important factors to be considered in locating or relocating Federal agencies are the mission-related requirements of the agencies and the costs to the Government of the space. The agencies must be able to execute their programs at the location provided by GSA, and if they serve a particular clientele, the space must be located accordingly. The availability of public transportation, proximity to certain other offices or facilities, and ready public access may also be essential. In addition to these mission-related considerations, it is our responsibility to provide suitable space as economically as possible. If space is not available in our existing inventory, leasing may be necessary; and the proposed area must provide sufficient competition for the procurement process. If we are too restrictive in determining the location of Federal agencies, we may increase the cost of leasing.

Question:

15. Should preference be given to locating agencies in the central business district of a city?

Answer:

15. Most agencies seeking space from GSA find that a location in the central business district is advantageous in the execution of their missions. It is convenient for employees and the public, other Government offices and businesses are nearby, and transportation and restaurants are generally available in the vicinity. Furthermore, Executive Order 12072 requires that first consideration be given to locating Federal activities in central business areas. It is our policy that agencies be located in these areas unless a programmatic reason or economic considerations necessitate their location elsewhere.

Question:

16. To what extent do you feel architectural and engineering services should be performed in-house and in what manner do you feel private architectural and engineering services should be procured?

Answer:

16. With respect to the question of performing architectural and engineering (A/E) services in-house, it is our position that in general the larger projects should be performed by contract A/E firms and smaller (often repair and alteration) projects should be performed in-house.

We are generally in favor of using the private sector for most projects, however, the smaller jobs are normally repair and alteration of existing buildings. Our staff is knowledgeable of the facilities and can more readily and efficiently complete the design.

Question:

17. Do you support the provision of H.R. 630 which would require the full cost of multi-year leases to be funded up front?

Answer:

17. If the provision of H.R. 630 is enacted into law, this requirement will result in increasing the complexity and cost of administering the Public Buildings Service leasing program by an immeasurable amount. Although leases are contracted for periods of up to 20 years, the cost of each lease may change one or more times per year due to increases in the cost of services and real estate taxes, and changes in the amount of space under lease or the level of services required. The administrative and accounting systems necessary to accurately support such an endeavor would become extremely costly and cumbersome over time as the number of annual Congressional authorizations increased.

If this provision is enacted into law, the appropriation for Budget Activity 53, Rental of Space, would have to be increased nearly six-fold for FY 1984. Our current appropriation under a Continuing Resolution for FY 1984 is $880.5 million. The total rental obligation for all of GSA's leases through their termination dates (assuming exercise of all renewal options), adjusted upward for estimated escalation, is more than $5 billion. The mechanics of such a budgetary adjustment would have to be carefully constructed in order to avoid unduly restraining the resource level of other PBS programs.

(From General Services Administration)

COST ESTIMATE: INCREASED COSTS TO RAISE FEDERAL BUILDING 10 (NASA)
FROM "READY ACCESS" TO "FULL ACCESSIBILITY".

Costs detailed are estimates of those expenses required to advance a facility that meets a standard of "ready access and use" to what we assume to be a measure of "full accessibility". This estimate encompasses only those areas for which we can obtain solutions from readily available existing technology. Note that, despite increasing building costs by almost six percent, no additional handicapped people will be able to use this facility.

Basic units costs have been derived from "Access Maryland", a comprehensive state-wide survey prepared in 1980 by Noakes Associates, Architects, 4340 East-West Highway, Bethesda, Maryland 20014. Costs have been updated to summer 1983.

A. EXTERIOR COSTS

1. Entrances:

a. Add ramps at entrances having steps:

North - 8 risers x $1170	$ 9,360
1 wheelchair lift	19,500
West - 10 risers x $1170	11,700
	$ 40,560

2. Parking:

a. Convert all 234 indoor spaces to accessible, build additional space under south court. Accessible spaces, access aisle and approach space require minimum of 75 sq. ft. additional each times $65/sq. ft. cost:

234 x 75 sq. ft. x $65	$1,140,750
234 x $96 stripping costs	22,464
	$1,163,214

3. a. Basement type:

2 5 x 5 stalls x $1025	$ 2050
2 x 17 sq. ft. x $85/sq. ft.	2890
2 lav. lowered x $784	1565
2 lav. insulated x $138	275
2 lever faucets x $116	230
2 mirrors lowered x $26	50
2 towels lowered x $26	50
	$ 7,110

b. Public type toilets, Men:

3 stalls x $1025	$ 3,075
3 x 17 sq. ft. x $85	4,335
3 lavs. lowered x $784	2,350
3 lavs. insulated x $138	415
3 lever faucets x $116	350
2 mirror/towel x $150*	300
1 urinal lowered x $784	784
1 rework entrance door x $2,800	2,800
	$ 14,409
Floors 1,2,3,4,5,6 have 2 each or 6 x 2 x $14,409	$ 172,910

Public type toilets, Women:

4 stalls x $1025	$ 4,100
4 x 17 sq. ft. x $85	5,780
3 lavs. lowered x $784	2,350
3 lavs. insulated x $133	415
3 levers handles x $116	350
2 mirror/towel x $150*	300
	$ 13,295
Floors 1,2,3,4,5,6 have 2 each or 6 x 2 x $13,295	$ 159,540

4. Doors: Install lever hardware on all doors -

Basement	30 x $253	$ 7590
First Floor	150 x $253	37,950
Second Floor	200 x $253	50,600
Third Floor	200 x $253	50,600
Fourth Floor	200 x $253	50,600
Fifth Floor	200 x $253	50,600
Sixth Floor	200 x $253	50,600
		$ 298,540

5. Install new alarm/exit signs at each fire stair -

7 Floors x 3 stairs x $570	$ 11,970
4 entrances x $570	2,280
	$ 14,250

6. Visual alarms installed in every office, space, or room (USPS cost figure.)

Basement	23 x $111	2555
First Floor	113 x $111	12,545
Second Floor	150 x $111	16,650
Third Floor	150 x $111	16,650
Fourth Floor	150 x $111	16,650
Fifth Floor	150 x $111	16,650
Sixth Floor	150 x $111	16,650
		$ 98,350

7. Railing extensions in stairs:

54 ext. x $86	$ 4,644

8. Extend elevator to roof - 2 towers:

1 stop x $15,550 x 2	$ 31,100
New penthouse - 20,000 x 2	40,000
Install new wheelchair lifts - 2 x $19,500	39,000
	$ 110,100

TOTAL ALL AREAS:

1. Entrances	$ 40,650
2. Parking	1,163,214
3. Toilet Facilities	339,560
4. Doors	298,540
5. Exit signs	14,250
6. Visual alarms	98,350
7. Railings	4,665
8. Elevators	110,100
	$2,069,329

Building statistics: ($4.86/sq. ft.)

Gross sq. ft. - 425,616

NOTE: All of the above should be considered as "concept stage" cost data; derived from 1/8" scale assignment drawings and spot field checked.

DEPARTMENT OF THE ARMY
OFFICE OF THE CHIEF OF ENGINEERS
WASHINGTON, D.C. 20314

November 25, 1983

REPLY TO
ATTENTION OF:

Engineering and Construction

Honorable E. Clay Shaw, Jr.
Ranking Minority Member
Subcommittee on Public Buildings and
  Grounds
Committee on Public Works and
  Transportation
House of Representatives
Washington, D. C. 20515

Dear Mr. Shaw:

Thank you for the opportunity for Mr. Thomas A. Kenney to represent the Department of Defense and participate in the recent Public Buildings and Grounds Subcommittee hearings.

Regarding your question concerning the difference between readily accessible and fully accessible, I am pleased to provide the attached answer for the record. If I can be of any further assistance, please let me know.

Sincerely,

Robert H Ryan
Robert H. Ryan
Colonel, Corps of Engineers
Executive Director
Directorate of Engineering &
  Construction

Attachment

Question: What do you understand is the difference between readily accessible and the proposed fully accessible?

Answer:

1. The term "accessible" describes a site, building, facility, or portion thereof that can be approached, entered, and used by physically handicapped persons. An "accessible route" is a continuous unobstructed path connecting accessible elements or spaces in a building or facility that can be negotiated by a severely handicapped person using a wheelchair and that is also safe for and usable by people with other disabilities. Interior accessible routes may include corridors, floors, ramps, elevators, lifts, doors, and clear floor space at fixtures or accessible elements. Exterior accessible routes may include parking space access aisles, curb ramps, walks, ramps, and lifts. Accessible fixtures and elements may include water closets, sinks, urinals, telephones, drinking fountains, vending machines, controls, fixed seating, and the like.

2. Currently, Department of Defense facilities which are open to the public, or to limited segments of the public, or which may be visited by the public in the conduct of normal business, or where civilian employees may be employed, shall be designed and constructed to be "readily accessible" to physically handicapped persons. The criteria for making an applicable facility readily accessible have been derived from existing Department of Defense Design Manuals, Uniform Federal Standards, the April 29, 1983 Federal Register, and Corps of Engineers Regulations as follows:

a. At least one primary entrance will be made accessible to, and usable by, physically handicapped persons.

b. At least one accessible route to and from every interior or exterior accessible area or element of the facility will be provided.

c. A reasonable number of, or percentage of, or at least one element or fixture accessible to, or usable by, physically handicapped persons will be provided. For example:

(1) Fifty percent of all drinking fountains.

(2) One telephone within each bank of public telephones.

(3) A reasonable number, but always at least one, water closet, urinal and sink in each accessible toilet room. In multi-story facilities, at least one accessible toilet room will be provided per floor for each sex.

(4) At least five percent of, but always at least one, fixed seating space or tables.

(5) All emergency warning systems shall include both audible and visuals signals.

(6) A reasonable number, but always at least one, parking space. In this case, reasonable is further defined as one accessible space for every twenty-five parking spaces or, in the case of large parking lots, approximately two percent of the total.

d. On a case by case basis, accessible individual work spaces for physically handicapped civilian employees will be provided. This includes accessible elements and equipment such as a desk, cabinets, shelves, and a telephone.

3. The criteria for making applicable facilities readily accessible do not include making such elements as elevator pits, elevator penthouses, mechanical/electrical equipment rooms, piping or equipment catwalks, electrical or telephone closets, and general utility rooms accessible to, and usable by, physically handicapped persons.

4. The term "fully accessible" as presented in Section 307 of S.452 could be interpreted to mean that the complete or entire facility, including all spaces, areas, elements and fixtures, must be accessible to, and usable by, physically handicapped persons. For example:

a. All primary or secondary entrances must be accessible.

b. All routes to and from every area or element of the facility must be accessible.

c. One hundred percent of all elements or fixtures such as drinking fountains, public telephones, water closets, urinals, sinks, fixed seating, parking spaces and vending machines must be accessible.

d. All individual work spaces and elements, including such items as desks, cabinets, shelving, telephones and other equipment, must be accessible.

e. All elements such as elevator pits, elevator penthouses, mechanical/electrical equipment rooms, piping or equipment catwalks, electrical or telephone closets, and general utility rooms must be accessible.

5. In summary, "readily accessible" facilities provide for reasonable and equitable access to, and use by, physically handicapped persons. A "fully accessible" facility could be interpreted to unreasonably and unnecessarily provide for complete and entire access to, and use by, physically handicapped persons to such a degree that the facility becomes almost unusable to able-bodied persons.

IMPLEMENTATION OF THE BARRIERS ACT AND PROVISIONS OF S. 452

Question 1. Section 6(2) of the Barriers Act requires that each of the standard-setting agencies establish a system of continuing surveys and investigations to ensure compliance with the standards.

Question A. Do you have such a system in place?

Answer. All new facilities and major modifications (which are covered by the ABA) must be certified to be accessible before they are funded. However, there is no overall dedicated survey-information system to identify or list accessible buildings.

Question B. What does your system consist of?

Answer. Our procedural system involves review and approval of provisions for accessibility to the handicapped in every new construction, addition, or major alteration project, during both the programing and design phases of the work. Inspector General surveys, post occupancy surveys, and the building status records of the Facility Engineers also contribute to the ensurance of compliance.

Question C. If you do not have such a system, why not?

Answer. The current procedural system effectively ensures compliance with the Barriers Act.

Question D. Do you maintain inventories of your buildings such that you know which buildings come under the Barriers Act and at what level of accessibility those buildings might be? If not: What would it take to develop such an inventory or to include accessibility as a part of any existing inventory?

Answer. We do not maintain this type of inventory. We do not believe that an inventory would serve any purpose or have any value. However, such a system could be established in conjunction with existing property management systems. The phrase "level of accessibility" would have to be defined.

Question E. Do you know how many of your buildings do not come under the Barriers Act provisions? Under what circumstances are such buildings not covered by the Architectural Barriers Act?

Answer. We don't know the exact number of DOD buildings that do not come under the Barriers Act provisions. Neither do we feel that such a statistic would serve any practical purpose. There are over 450,000 buildings in the DOD inventory. Buildings not covered by the ABA are those which were built before 1969 and those built since then which are intended primarily for use by able-bodied military personnel.

Question 2. Do your agencies receive complaints directly from the general public concerning inaccessibility to certain buildings?

Answer. We have received a few but none in the past two years.

Question Please describe what procedures have been established in your agency for dealing with such complaints?

Answer. If we receive a complaint from the general public, the Military Department involved is asked to investigate and report findings. Corrective action is taken if indicated.

Question 3. About how many such complaints are received by your agency each year? Have the number of complaints dropped in recent years? Or increased?

Answer. In 1977 seven complaints were received from the A&TBCB; in 1978, six; in 1979, three; in 1980, five; in 1981, three; in 1982, four; and in 1983, four. During the same period of time there were five or six complaints that came directly from the general public.

Question 4. Are such complaints forwarded to the Compliance Board for any determination on whether there is a violation of the Barriers Act standard or for advisory purposes? If not, why not?

Answer. Responses to all complaints received from the A&TBCB are coordinated with the Board in accordance with established A&TBCB procedures. Complaints that come directly from members or the general public have not been sent to the A&TBCB. Amicable solutions have been worked out in all cases.

Question 5. The A&TBCB has issued rules setting forth procedures to resolve with the agencies those complaints received by the Board. Are such matters resolved amicably in most instances? Have there been any unusual problems?

Answer. All complaints have been resolved amicably with no unusual problems.

Question 6. In 1980, the GAO did a follow-up, review of an earlier review and report of 1975. In general, GAO apparently found progress had been made with building accessibility since their 1975 review, but more in a good faith effort than from systematic and coordinated effort under the law. Although further progress has undoubtedly been made since then, there is one particular GAO recommendation on which I would like you to comment.

GAO said that some confusion existed between the Compliance Board and some agencies because the Barriers and Rehabilitation Acts overlap functions without clarifying respective leadership and authority roles. The recommendation was that the Barriers Act be amended to establish the Board as the principal authority to provide leadership and ensure compliance. Further, that HUD, DOD, GSA and the Postal Service consult with the Board and obtain its concurrence to be sure standards conform to the guidelines and requirements.

Answer. Consultation with the Board has been continuous. The Board has provided leadership and does ensure compliance.

Question 7. In S. 452, Section 112(2), the term "physically handicapped person" would mean any individual with a physical impairment that precludes such person's use of a building to the same extent that an individual with unimpaired mobility can use such building.

The definition seems to describe a physically handicapped person in terms of a building and is geared toward mobility of handicapped individuals.

(1) Do you have any particular problems with that definition?

Answer. Yes we do. We don't feel that the comparison to an individual with unimpaired mobility is appropriate. It implies that facilities can and should be designed so that everyone has equal ability to use them. This is probably an impossible goal. Also, the proposed definition is insensitive to handicapped persons who have disabilities other than mobility impairments.

Question 8. Do you think it adequately covers barriers encountered by persons who might have hearing and visual problems, or persons with various nervous disorders or other physical handicaps?

Answer. No we don't. It addresses mobility alone.

Question 9. If it were decided to include in the Architectural Barriers Act a definition of "physically handicapped person," do you think it would be reasonable to use language similar to that used in other legislation, such as: "Physically handicapped person" means any individual with a physical disability which limits one or more major life activity. Do you have any other suggested language?

Answer. The definition based on limitation of major life activities is currently incorporated in regulations issued by the A&TBCB and seems adequate for the purposes for which it is used. It is almost impossible to devise a definition of handicap that is useful in all situations. Administrative definitions are more flexible than, and therefore preferable to, statutory definitions.

Question 10. The definition for the term "fully accessible" as contained in S. 452 would, according to your testimony, be susceptible to broad interpretation and greatly increase the cost of accessibility to the Federal Government. What would your reaction be to language defining the term to mean: The incorporation of such features and equipment which make a building or facility usable by physically handicapped persons to the same extent as non-physically handicapped persons and, in a building of historic, architectural, or cultural significance, the incorporation of such features and equipment in such manner as to be compatible with the significant architectural features of the building to the maximum extent possible. Do you think that would be a workable definition?

Answer. We do not. The phrase "to the same extent as non-physically handicapped persons" is just as undefined as the term "fully accessible." Our position on the terms "fully accessible" and "readily accessible" were provided, with full particulars, to Mr. E. Clay Shaw, Jr., in our letter dated 25 November 1983. Excerpts from this letter follow:

"The term 'fully accessible' as presented in Section 307 of S. 452 could be interpreted to mean that the complete or entire facility, including all spaces, areas, elements and fixtures, must be accessible to, and usable by, physically handicapped persons.

"* * * 'readily accessible' facilities provide for reasonable and equitable access to, and use by, physically handicapped persons. A 'fully accessible' facility could be interpreted to unreasonably and unnecessarily provide for complete and entire access to, and use by, physically handicapped persons to such a degree that the facility becomes almost unusable to able-bodied persons."

Question 11. If we were to decide that some definition for either the term "fully accessible" or "readily accessible" should include in the Architectural Barriers Act, do you have any suggestions for language to define these terms?

Answer. We do not believe that the term "fully accessible" should be included in the Architectural Barriers Act. It has taken the A&TBCB and the four standard setting agencies many years and many pages to set forth standards for facilities to provide "ready access and use." No further definition is considered necessary.

Questions Concerning the Cost of Making Buildings Accessible

Question 1. For some time, this Subcommittee has tried to get hard information about the costs for accessibility, particularly in light of the minimum guidelines. Informal estimates have ranged from a high of $800 million to as low as approximately $3 million. Can you explain why this difference?

Answer. Approximately 10 percent of our facilities are covered by the ABA. This amounts to some $750,000,000 worth of new construction this year. We estimate the cost of accessibility to be one-tenth of one percent or about $750,000. Costs in other years would vary with the size of the program. We are not familiar with the other costs you mentioned.

Question A. What do you now estimate for a cost figure based on the minimum guidelines and/or the uniform standards as you have presently drafted them?

Answer. As stated, about $750,000 this year. We expect this cost to increase in future years, as we expect our construction program to be larger.

Question B. Since the minimum guidelines—and presumably the uniform standards—contain sections yet to be completed pending further research, are the cost figures presently estimated likely to be considerably greater?

Answer. Since the extent of the new sections planned for the minimum guidelines is unknown, this question cannot be answered at this time.

Question C. Would you elaborate on those sections expected to be included in the minimum guidelines?

Answer. The sections currently reserved by the A&TBCB are: Subpart A—General, sections 1190.7 (undefined), and 1190.8 Site Conditions; all of Subpart B (undefined); Subpart C—Scope, Sections 1190.30 Scope, and 1190.30 (undefined); Subpart D—Technical Provisions, sections 1190.140 Windows, 1190.190 Tactile Warnings, and 11920.200 Signage; all of Subpart E—Special Building or Facility Types or Elements, which will include residential structures, recreational facilities, historic structures, hospitals, food service facilities and library stacks.

Question D. Will the uniform standards be amended to reflect them?

Answer. Yes. The UFAS will be revised to comply with the minimum guidelines whenever they are changed. All amendments will be coordinated with the A&TBCB.

Question E. Are there particular problems with these sections?

Answer. Yes. As an example, there is no manufacturer that makes a window that meets the ANSI requirements for operation by the handicapped. The only way we know to meet these requirements would be to make power windows. The cost and maintenance problems for power windows would be enormouns. At the moment, we do not know how to solve this problem.

Question 2. Your statements reflect that the provisions of S. 452 would be very costly. Do you have estimates as to how much more costly?

Answer. We have not done detailed cost studies on the implication of the term "fully accessible" as presented in Section 307 of S. 452. If it were interpreted to mean that the complete or entire facility, including all spaces, areas, elements and fixtures, must be accessible to, and usable by, physically handicapped persons; one hundred percent of all elements of fixtures such as drinking fountains, public telephones, water closets, urinals, fixed seating, parking spaces and vending machines would have to be accessible, as well as all janitor closets, mechanical rooms, electrical closets and elevator access pits. All individual work spaces and elements, including such items as desks, cabinets, shelving, telephones and other equipment would have to be accessible. The result would be an increase of between 50% and 80% of the current costs for making facilities accessible since, under the current standards of "readily accessible," only a percentage of all elements and fixtures, and only appropriate spaces and areas, are made accessible.

Question 3. On what basis are your cost estimates made? What are the problems in determining costs?

Answer. During the programming phase, cost estimates are based on empirical data regarding the size and type of facility, geographic location, and provisions for cost escalation and locational adjustment. During the design stages, cost estimates are based on quantity takeoffs of materials, labor time, and labor rates. We do not currently itemize or separate the costs for making a facility accessible.

Questions Regarding Waiver and Modification Provisions

Question 1. S. 452 would tighten agency use of the waiver and modification provisions of the Barriers Act. From your prepared statement, apparently you do not believe this power has been abused in the past and, in fact, is used only on a very few occasions. Could you provide us with figures reflecting the number of times your agencies have waived standards or modified them?

Answer. Because we require waivers and modifications to be requested from the Deputy Assistant Secretary of Defense (Installations), and also because the DOD policy is that waivers and modifications will only be granted under extraordinary circumstances, DOD has only granted three waivers in the past ten yeas.

Question. How are waivers and modifications currently handled by your agencies and for what kinds of situations?

Answer. Request for waivers or modifications originate at the installation level and are forwarded to the field office having authority for design. With full details and justification, and an endorsement from the Major Command for the particular installation, the package is sent to the Headquarters of the responsible service. If the waiver or modification is considered valid at that level, it is requested through channels from the Deputy Assistant Secretary of Defense (Installations). The request is then coordinated with the A&TBCB and a decision is made. No request for waiver has been processed in the past three or four years.

Question 2. S. 452 would limit action to waive a standard to a building to be leased (other than a building to be constructed for lease), and where the waiver is necessary to meet an emergency situation. Has the provision been used in the past by your agencies in connection with leased buildings?

Answer. The Department of Defense has never used the waiver provision with respect to leased facilities.

Question 3. Your prepared statements reflect that limiting the power to waiver or modify standards would create problems with your construction and alteration projects and would be more costly. Would you elaborate a bit on this and provide some examples of the kinds of problems that might be created and estimates of increased costs?

Answer. As stated, amending the authority to grant waivers to standards developed by the standard-setting agencies will limit the agencies in their ability to avoid impractical or cost prohibitive projects on a case-by-case basis.

Question 4. Are the waivers and modifications of your agency standards forwarded to the Compliance Board for a review of findings of fact which was a function assigned the Board under the Rehabilitation Act, as amended in 1978?

Answer. The Deputy Assistant Secretary of Defense (Installations) coordinates all requests for waivers and modifications, that he determines to be justified, with the A&TBCB. As noted above, no waivers have been granted in the past three or four years.

QUESTIONS REGARDING THE LEASE ISSUE

Question In the final version of the minimum guidelines, the Compliance Board expressed no position on when a leased building is required to be accessible. We are, of course, well aware that the lease issue is currently in the courts.

(a) Why is it not in the guidelines?

Answer. The A&TBCB decided to reserve the section on leasing in order to await the decisions of the courts.

Question b. How does the A&TBCB justify placing the burden of interpretation of the Barriers Act on private litigants?

Answer. We prefer that this question be directed to the A&TBCB.

Question c. Do the draft uniform standards deal with this issue?

Answer. No, they do not. The individual standard setting agencies (GSA, DOD, HUD, and USPS) address this issue separately.

Question d. How are you currently handling accessibility in leased buildings?

Answer. DOD 4270.1-M states the following:

"Leased Facilities: Facilities leased by the General Services Administration for Department of Defense use shall comply with applicable standards of the General Services Administration. Except as provided below, when the Department of Defense is leasing facilities for the type of use described in New Construction above, every attempt will be made to acquire accessible buildings in such leasing. Where portions of buildings are being leased for such purposes, every attempt will be made to acquire accessible space in accessible buildings. Where no accessible buildings or accessible space is offered for lease and inaccessible space must be leased, the Deputy Assistant Secretary of Defense (Installations) will be informed in order that the magnitude of the overall leasing/accessibility problem may be assessed. The following types of facilities when leased, need not be in accessible space:

(1) Recruiting offices and stations except that Recruiting Main Stations must be accessible.

(2) Unaccompanied personnel housing.

(3) Space leased in emergencies such as natural disasters or war.

(4) Space leased for occupancy and/or use by able-bodied military personnel only."

Question 2. Should the appeal now in the courts favor the Mason Rose position on the lease issue? Will your agency's policy concerning the lease of accessible space be changed? With what effect?

Answer. As we understand the case, and because—as noted before—the Department of Defense leases very few facilities that are covered by the ABA, we do not expect that our leasing policy will need to be changed whichever way the Court finally rules. Other agencies may be more directly affected.

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D.C. 20410

ASSISTANT SECRETARY FOR
LEGISLATION AND CONGRESSIONAL RELATIONS

March 21, 1984

Honorable Robert A. Young
Chairman, Committee on Public
Works and Transportation,
Subcommittee on Public Buildings
and Grounds
House of Representatives
Washington, D.C. 20515

Dear Mr. Young:

This is in response to your letter of February 10, 1984 which raised a number of questions relevant to the hearings held on November 3, 1983, regarding proposed legislative amendments to the Architectural Barriers Act of 1968, as amended.

The answers to these questions are attached. If we can be of further assistance, please let us know.

Very sincerely yours,

Stephen May
Assistant Secretary

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Response to Subcommittee on Public Buildings and Grounds
Committee on Public Works and Transportation
U. S. House of Representatives

1. Does this proposed Uniform Standard require residential housing to have any adaptable dwelling units? Does HUD plan to provide (adaptable) units as well as accessible units? If so, where? If not, why not?

The Uniform Federal Accessibility Standards (UFAS) allow either adaptable or accessible dwelling units to be provided. Either type of unit will fulfill the requirement for accessible units established in subsection 4.1.4 of the UFAS. The choice between accessible or adaptable units is, we believe, appropriately left to local discretion. For example, some projects may be designed for occupancy by individuals with a disability requiring the use of wheelchairs and therefore would be designed and built for complete wheelchair accessibility. Another community may have relatively small demand for housing to accommodate wheelchair users, and would choose to build adaptable units that could be adapted at some future time according to market demand. The technical provisions of the UFAS for dwelling units in section 4.34 prescribe specifications for both accessible and adaptable units.

2. Will the Uniform Standards require that only a certain percentage of Federally-owned and assisted housing units and dormitories be accessible? What percentage? Where in the Barriers Act do you find an exemption from the ready access requirement for the remaining percentage of these units? Can you justify this limitation?

Paragraph (10) of subsection 4.1.4, Use Groups, prescribes requirements for the number of accessible units that must be provided in residential projects, including dormitories. Specifically, any project of 15 or more units must provide accessibility in the greater of five percent of the total units, or at least one unit. This requirement may be adjusted by the appropriate agency head where local needs assessments conducted under applicable regulations indicate a greater or lesser number of accessible units is needed.

The authority of the standard-setting agencies under the Architectural Barriers Act to establish percentage requirements for such uses was upheld by the action of the Architectural and Transportation Barriers Compliance Board (ATBCB) at its March 13, 1984 meeting. The General Counsel of the ATBCB reported to the Board at that meeting that her review of the statute and legislative history indicated that Congressional intent was clear on the point of expecting only a portion of the dwelling units in a given building to be accessible.

Five percent, or at least one unit, is believed to be an appropriate requirement in view of the proportion of wheelchair users to the population as a whole. The most recent studies available estimate that fewer than one percent of the noninstitutionalized population use wheelchairs all or part of the time. One study based on the 1977 National Health Interview Survey estimated that 645,000 people use wheelchairs, about half of them all of the time. A 1977 Department of Transportation study estimated wheelchair users at 409,200, while a November 28, 1979 paper developed by staff at the then-Department of Health, Education and Welfare postulated a population of one million wheelchair users, two-thirds of whom were over age 65. The number of accessible units required by the UFAS thus far exceeds the actual portion of the population that needs accessible dwelling units.

The majority of handicapped people do not need the range of features required in a unit that is accessible. Particular adaptations needed by people with sight or hearing impairments, for example, can be made in any unit.

3. Questions concerning the Uniform Standards were directed primarily to GSA. Would you, however, look over the questions and provide us with your agency's views, particularly with regard to the standards' compliance with the Board's Minimum Guidelines and to the apparent emphasis on the current ANSI Standards? Please also address the question of whether every agency will be using the same exact standards.

The ATBCB, through its staff, has worked closely with the UFAS Task Force on the development of the final standards, and we anticipate Board endorsement of the document. From the outset, the standard-setting agencies stated their intent to comply with the Minimum Guidelines while retaining, to the greatest extent possible, the ANSI A117.1 format. We believe that our reliance on the ANSI Standard as the source document is consistent with the OMB directive for Federal use of private consensus standards wherever appropriate.

Retaining the basic ANSI format will enable architects in private practice to move more easily from private sector design work to Federal design work, since the ANSI Standard is widely used in private practice and by schools of architecture in coursework on accessible design. In addition, many Federal regulations currently reference the ANSI Standard where accessibility requirements are imposed.

The ANSI Standard and UFAS have a simple numbering system, while the Minimum Guidelines are numbered to conform with Federal Register practice. This results in extremely long numbers, e.g., §1190.230(b)(4)(i). A corresponding number under the ANSI system would be 4.33.3(a).

The private sector is generally not familiar with, and understandably confused by, the complicated Federal Register format. The ANSI system thus has the great advantage of being simpler in itself, in addition to being already well known to architects and code officials across the country because of its 23-year history and the extensive public education efforts conducted by its private sponsors.

To respond to the question regarding agency use of a single standard, that principle was the driving force behind the development of the UFAS. At the present time, each of the four agencies prescribes a different standard, although the technical provisions of ANSI A117.1 underlie all of them. In developing the UFAS, the four standard-setting agencies worked in cooperation with other Federal agencies that build or fund a variety of building types in order to produce a standard that provides comprehensive coverage of the range of facilities that are covered by the Architectural Barriers Act. The UFAS, when published in final form and adopted by each of the standard-setting agencies, will replace the current standards that now vary from agency to agency. Each agency will prescribe necessary additional directives, such as waiver and modification procedures, appropriate to agency administrative authority.

If, at some future time, additional standards are needed, the four agencies can again work together on developing appropriate revisions.

Comments on Questions Directed to GSA

Implementation

Compliance - Question 1.

The Department's implementing regulations for the Architectural Barriers Act are set forth in 24 CFR Parts 40 and 41 (Attachment A). Of currently active HUD programs, the Barriers Act covers public housing and Section 312 Rehabilitation Loans. However, the 312 Loan program is primarily used for privately owned residential structures, which are exempt under section 1 of the Act.

Unlike the other four standard-setting agencies, HUD does not own the buildings covered by the Act. The Department therefore does not maintain a central inventory.

Complaints - Questions 2-5.

Procedures for handling all complaints are shown on Attachment B. Very few complaints are received directly from the public; in Fiscal Year 1983, three complaints from the public were received by the Architectural Barriers Compliance Officer. None were under the jurisdiction of the Architectural Barriers Act, and were referred to HUD's Office of Fair Housing and Equal Opportunity for possible action under Section 504 of the Rehabilitation Act of 1973.

In Fiscal Year 1982, fifteen complaints were received through the ATBCB. One complaint was received in Fiscal Year 1983, and five complaints have been recorded to date in Fiscal Year 1984. Resolution of complaints generally has been amicable.

Section 504/Architectural Barriers Act Overlap - Question 6.

We believe that the current situation, with the Department of Justice coordinating compliance with Section 504 and the ATBCB providing advisory technical assistance on accessibility issues that arise, is working well. The roles of the standard-setting agencies under the Barriers Act are clearly defined and understood. Any revisions to the present system would tend to create confusion by introducing changes that in fact are not needed.

Our experience has been that any confusion between the Barriers Act and Section 504 is generally on the part of the public; the agencies involved, and those charged with compliance with the two statutes, understand the relationships. Agencies that choose to adopt the Department of Justice recommendation that the Architectural Barriers Act standards be used as the technical standard for accessibility required under Section 504 can further simplify compliance with both Acts.

Proposed definitions for the Barriers Act - Questions 7-10.

As stated in our testimony, HUD believes that the Architectural Barriers Act is working well as presently enacted. The standard-setting agencies and the ATBCB together developed a definition for "physically handicapped person" that is incorporated in the UFAS and therefore will be applied uniformly under the Barriers Act. Given this level of agreement, there does not appear to be any need to create a new definition and add it to the statute. The definition agreed upon by the agencies and the ATBCB differs from the one proposed in S. 452 by focusing on the effects of the functional limitation on an individual's ability to use a building, without judging that ability against an able-bodied person's capability.

In addition, the UFAS definition covers the barriers that may be encountered by a person with hearing and visual impairments whereas the proposed definition in S. 452 is addressed solely to mobility barriers.

For the purposes of the Barriers Act, we believe that the UFAS definition is preferable to any definition that considers handicap in terms of limitations in major life activities. The Barriers Act is concerned with accessibility to physical structures, and the definition should reflect that statutory mandate.

Similarly, HUD believes that the statutory term "ready access to, and use of" buildings has proven over the years to be an effective and workable term. Any requirement for "full accessibility" that would call for incorporation of features or equipment to make a building or facility usable by physically persons to the same extent as nonphysically handicapped persons would impose a requirement that is probably impossible to fulfill and would be difficult to define for enforcement purposes.

Waiver and Modification Procedures

Use of waivers - Questions 1 - 3.

Waivers are rarely requested for residential structures in new construction. Over the past two fiscal years, for example, HUD has issued no waivers.

When the UFAS is adopted, with its more detailed specifications of accessibility requirements, it is conceivable that more waivers will be requested. For example, in the public comment on the proposed UFAS, the State of Alaska pointed out some specifications that would not be practical, or indeed even possible, given the severe climatic conditions.

It is not realistic to write a standard that provides exceptions for each such situation; rather, these situations represent the type of conditions for which waivers were designed. To prohibit waivers except for leased buildings in emergency situations would make it necessary to attempt to write a standard that could accommodate any conceivable extreme condition, no matter how localized. Since HUD programs under the Architectural Barriers Act do not include leased buildings, the proposed restriction would allow no waivers for any HUD projects.

Costs of Accessibility

Cost Estimates - Questions 1-3.

The Department does not anticipate any significant increase over the current cost for accessibility when the UFAS becomes effective. The range of estimated costs cited by the Subcommittee are probably attributable to different methodologies or assumptions used by those making the estimates.

The cost estimates most frequently quoted are generally limited to the case of making a public building accessible at the time of new construction. Unlike public buildings, residential facilities can have significant additional costs depending on the type of building. For example, kitchens, there will be additional costs for such items as custom cabinetry and more expensive refrigerators. Instead of spreading the cost of a relatively small number of grab bars in toilet rooms over a large office building, each accessible dwelling unit must include grab bars.

In alterations of residential structures, the costs are also proportionately higher because of the more restricted space in which accessibility modifications must be accommodated within the dwelling unit. In public toilet rooms, an accessible stall can often be provided by combining two standard stalls; in a dwelling unit, the bathroom may have to be enlarged by moving walls.

If the "full accessibility" requirement proposed in S. 452 were enacted, we believe that the cost in residential structures would approximate that estimated earlier for the original, more stringent Minimum Guidelines and Requirements (as published on January 6, 1981) -- an increase of 16 percent in new construction costs and 64 percent in public housing modernization costs.

These cost estimates were made by comparing those requirements with the requirements currently in effect under HUD standards. The cost of each additional feature or element that would have been added by the Minimum Guidelines was estimated using the current (1981) edition of the F. W. Dodge Company Cost Index.

Leasing Issues

This category of questions is not applicable since facilities are not leased under HUD programs subject to the Architectural Barriers Act.

ATTACHMENT A

PART 40—STANDARDS FOR DESIGN, CONSTRUCTION, AND ALTERATION OF PUBLICLY OWNED RESIDENTIAL STRUCTURES

Sec.
40.1 Purpose.
40.2 Definition of "residential structure."
40.3 Applicability.
40.4 Standards
40.5 Waiver
40.6 Records.

AUTHORITY: Sec. 3, 82 Stat. 719, 42 U.S.C. 4153; sec. 7(d), 79 Stat. 670; 42 U.S.C. 3535(d).

SOURCE: 36 FR 24437, Dec. 22, 1971, unless otherwise noted.

§ 40.1 Purpose.

This part prescribes standards for the design, construction, and alteration of publicly owned residential structures to insure that physically handicapped persons will have ready access to, and use of, such structures.

§ 40.2 Definition of "residential structure."

(a) As used in this part, the term "residential structure" means a residential structure (other than a privately owned residential structure and a residential structure on a military reservation):

(1) Constructed or altered by or on behalf of the United States;

(2) Leased in whole or in part by the United States after August 12, 1968, if constructed or altered in accordance with plans and specifications of the United States; or

(3) Financed in whole or in part by a grant or loan made by the United States after August 12, 1968, if such residential structure is subject to standards for design, construction, or alteration issued under authority of the law authorizing such grant or loan.

(b) As used in this part, "residential structure" includes the following:

(1) Any residential structure which, in whole or in part, is intended for occupancy by the physically handicapped or designed for occupancy by the elderly;

(2) All elevator residential structures;

(3) Any residential structure which contains 25 or more housing units; and

(4) Nonresidential structures appurtenant to a residential structure covered under this part.

§ 40.3 Applicability.

(a) The standards prescribed in § 40.4 are applicable to residential structures designed after the effective date of this part. If the design of a structure commenced prior to that date, the standards shall be made applicable to the maximum extent practicable, as determined by the head of the department, agency, or instrumentality of the United States concerned. If no design stage is involved in the construction or alteration of a residential structure, the standards of § 40.4 shall be applicable to construction or alteration for which bids are solicited after the effective date of this part.

(b) The standards prescribed in § 40.4 are not applicable to:

(1) Any portion of a residential structure or its grounds which need not, because of its intended use, be made accessible to, or usable by, the public or by physically handicapped persons;

(2) The alteration of an existing residential structure to the extent that the alteration does not involve work which is related to the standards of this part; or

(3) The alteration of an existing building, or of such portions thereof, to which application of the standards is not structurally feasible.

§ 40.4 Standards.

(a) Residential structures subject to this part shall be designed, constructed, or altered to insure that physically handicapped persons will have ready access to, and use of, such structures. This requirement shall be satisfied by using the specifications contained in the "American Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped, Number A117.1-1961," approved by the American Standards Association, Inc. (subsequently changed to United States of American Standards Institute), herein referred to as the "American Standard Specifications." Except as otherwise provided in paragraph (b) of this section, the standards shall be applicable to the extent provided in the American Standard Specifications.

(b) Application of the American Standard Specifications is modified as follows:

(1) The specifications in section 5.6 are applicable to toilet rooms which are provided for the public. Although no specifications are prescribed in section 5.6 for bathrooms in individual housing units, consideration shall be given to the need for access by the physically handicapped in connection with the design, construction, or alteration of such bathrooms.

(2) The specifications in section 5.10, "Controls," and 5.11, "Identification," are recommended specifications but not mandatory.

§ 40.5 Waiver.

The applicability of the standards set forth in this part may be modified or waived on a case-by-case basis upon application to the Secretary of HUD or, with respect to the college housing program under title IV of the Housing Act of 1950 (12 U.S.C. 1749) and the low-rent public housing program under the United States Housing Act of 1937 (42 U.S.C. 1401), to the Assistant Secretary for Housing Production and Mortgage Credit, made by the head of the department, agency, or instrumentality of the U.S. concerned only if the Secretary or the Assistant Secretary, as appropriate, determines that such waiver or modification is clearly necessary and consistent with the purpose of Public Law 90-480 (42 U.S.C. 4153).

§ 40.6 Records.

The administering agency's file on each contract, grant, or loan involving the design, construction, or alteration of a residential structure shall include appropriate documentation indicating: (a) That the standards prescribed in § 40.4 are applicable to and have been or will be incorporated in the residential structure, or (b) that the grant or loan has been or will be made subject to the requirement that the standards are applicable and will be incorporated in the residential structure. The file should also indicate any modification or waiver of the standards which has been issued by the Secretary of HUD.

PART 41—POLICIES AND PROCEDURES FOR THE ENFORCEMENT OF STANDARDS AND REQUIREMENTS FOR ACCESSIBILITY BY THE PHYSICALLY HANDICAPPED

Sec.
41.1 Applicability.
41.2 Definitions.
41.3 Assurance and declaration required.
41.4 Waiver or modification of standards.
41.5 Achieving compliance.
41.6 Matters involving the Architectural and Transportation Barriers Compliance Board.

AUTHORITY: Architectural Barriers Act of 1968, as amended by P.L. 90-480, 42 U.S.C. 4151 et seq.

SOURCE: 44 FR 62806, Oct. 31, 1979, unless otherwise noted.

§ 41.1 Applicability.

This part sets forth policies and procedures for the enforcement of standards and requirements for accessibility by the physically handicapped imposed:

(a) For nonresidential buildings or facilities by regulations issued by the General Services Administration at Subchapter D of the Federal Property Management Regulations, Subpart 101-19.6—Accommodations for the Physically Handicapped, or

(b) By regulation or contract under any other program of the Department, except a program subject only to standards or requirements at 24 CFR Part 8 imposed pursuant to section 504 of the Rehabilitation Act of 1973.

The policies and procedures of this part shall apply after the effective date of these regulations to all complaints received, and/or findings of noncompliance made, regarding buildings or facilities subject to such regulatory or contractural requirements.

§ 41.2 Definitions.

As used in this part, the term Secretary means the Secretary of Housing and Urban Development, or to the extent of any delegation of authority by the Secretary to act under this part, any other Department Official to whom authority has been delegated.

§ 41.3 Assurance and declaration required.

(a) Each Assistant Secretary shall, as a condition for approval of any contract or application for assistance under a program imposing standards and/or requirements for accessibility which are subject to this part, require an assurance of compliance with those standards and requirements. Such assurance shall be in a form acceptable to the Secretary.

(b) For each project covered under this part, except a project subject to Departmental examinations and inspections as set forth in § 41.5(a), the responsible Assistant Secretary shall require a declaration as to project drawings, specifications, and other construction documents. The declaration shall be signed by the licensed, or registered, architect or engineer, or by such other responsible official as designated by HUD, who has prepared such construction documents. The declaration shall affirm that the proposed project, to the best knowledge and belief of the declarer, conforms to applicable accessibility design standards and requirements. The declaration statement shall be in a form acceptable to the Secretary.

§ 41.4 Waiver or modification of standards.

(a) The applicability of standards and requirements for accessibility by the physically handicapped may be waived or modified on a case-by-case basis upon a written request from a recipient of a Departmental grant or loan or from a Departmental agency leasing a building or facility.

(b) For residential buildings or facilities, a waiver or modification may be granted only by the Secretary.

(c) Upon the recommendation of an Assistant Secretary, a waiver or modification for nonresidential buildings or facilities may be granted only by the Administrator, General Services Administration.

(d) No request for a waiver or modification shall be recommended for approval by an Assistant Secretary or approved by the Secretary unless the following criteria obtain:

(1) The granting of the waiver or modification is based upon findings of fact, and is not inconsistent with the provisions of the Architectural Barriers Act, and

(2) Application of the requirement or standard would adversely affect the purposes of the Departmental program under which the loan or grant is being provided or for which the building or facility is being leased.

(e) Requests for a waiver or modification shall be submitted to the appropriate Assistant Secretary for review. Each request shall include:

(1) The name and address of the requestor.

(2) The name and location of the involved building or facility.

(3) Any applicable plans, drawings, specifications or other descriptions of the building or facility.

(4) The standard provision or requirement from which the requestor seeks a waiver or modification.

(5) A description of the building or facility as to its accessibility for the physically handicapped and how the waiving or modification of a standard or requirement would affect that accessibility.

(6) A statement of the facts which establish that the criteria of paragraph (d) above would be satisfied.

(7) A description of the steps taken, or to be taken, to comply with standards and requirements for which a waiver or modification is not being requested.

(8) Such other information as the requestor or the responsible Assistant Secretary deems appropriate or necessary.

(f) If the responsible Assistant Secretary finds that the criteria of paragraph (d) above are satisfied, then he or she shall submit the request along with his or her recommendations to the Secretary for action or for referral to the Administrator, General Services Administration for action. In reviewing request for waiver and modifications, the Secretary shall assure consistent Department policy regarding the removal of architectural barriers and accessibility by physically handicapped persons.

(g) All waivers and modifications granted pursuant to this part shall have only future effect on; and are limited to cases for which the request is made.

§ 41.5 Achieving compliance.

(a) *Examinations and inspections.* If, for any project, an Assistant Secretary requires Departmental architectural and engineering examinations of drawings and specifications or other construction documents or requires Departmental architectural and engineering inspections during or upon completion of construction, those examinations and inspections shall include a determination of compliance with standards and requirements for accessibility referenced in this part.

(b) *Periodic compliance reviews.* The Secretary, in consultation with the appropriate Assistant Secretary, shall conduct surveys and investigations as deemed appropriate to achieve compliance with standards or requirements subject to this part.

(c) *Complaints.* Any interested person who has reason to believe that there has been noncompliance with standards or requirements subject to this part, may, by himself or herself, or by a representative, file a written complaint with the responsible Department Official or with the Architectural and Transportation Barriers Compliance Board, Washington, D.C. 20201.

(d) *Investigations.* The Secretary shall, after consultation with the appropriate Assistant Secretary, make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with standards or requirements subject to this part. The investigation should include a determination of the authority under which the standards or requirements were imposed and, where appropriate, a review of the records kept pursuant to 24 CFR 40.6; the circumstances under which the building of facility was designed, constructed or altered; and other factors relevant to a determination as to whether there has been noncompliance with this part.

(e) *Resolution of matters.* (1) If any examination, inspection, periodic compliance review, complaint, or investigation pursuant to this section indicates a failure to comply with the applicable standards or requirements, the Secretary shall attempt to gain voluntary compliance whenever possible.

(2) If it has been determined that voluntary compliance cannot be achieved, the Secretary shall refer the matter to the appropriate Assistant Secretary for action pursuant to his or her program authority regarding the residential structure or other building or facility under investigation, to achieve compliance with the requirements subject to this part. The Assistant Secretary shall report to the Secretary within 30 days of the date of such referral regarding the action taken and the schedule and means of achieving compliance, except that the Secretary may specify a shorter or longer reporting period, as deeded appropriate.

(f) *Disposition of unresolved complaints.* Unresolved complaints shall be referred to the Architectural and Transportation Barriers Compliance Board to be processed in accordance with 36 CFR Part 1150. A complaint shall be deemed unresolved if it is not resolved within 90 days of the date of the filing of the complaint with the Department.

(g) *Compliance action by other individuals.* Individuals other than the Secretary may receive complaints and undertake other appropriate actions to achieve compliance with requirements subject to this part, so long as initial notification of such complaints or proposed actions is given both to the Secretary and the appropriate Assistant Secretary.

§ 41.6 Matters involving the Architectural and Transportation Barriers Compliance Board.

(a) *Complaints.* With respect to any complaint referred to the responsible Department Official by the Architectural and Transportation Barriers Compliance Board (A&TBCB), the procedures set forth in this Part shall apply. In such a case, the Secretary shall coordinate all investigations and/or other compliance actions to assure that the Department resolves any architectural barriers deficiencies so as to respond to the A&TBCB within its required 60-day period set forth at 36 CFR 1150.41 for the informal resolution of complaints.

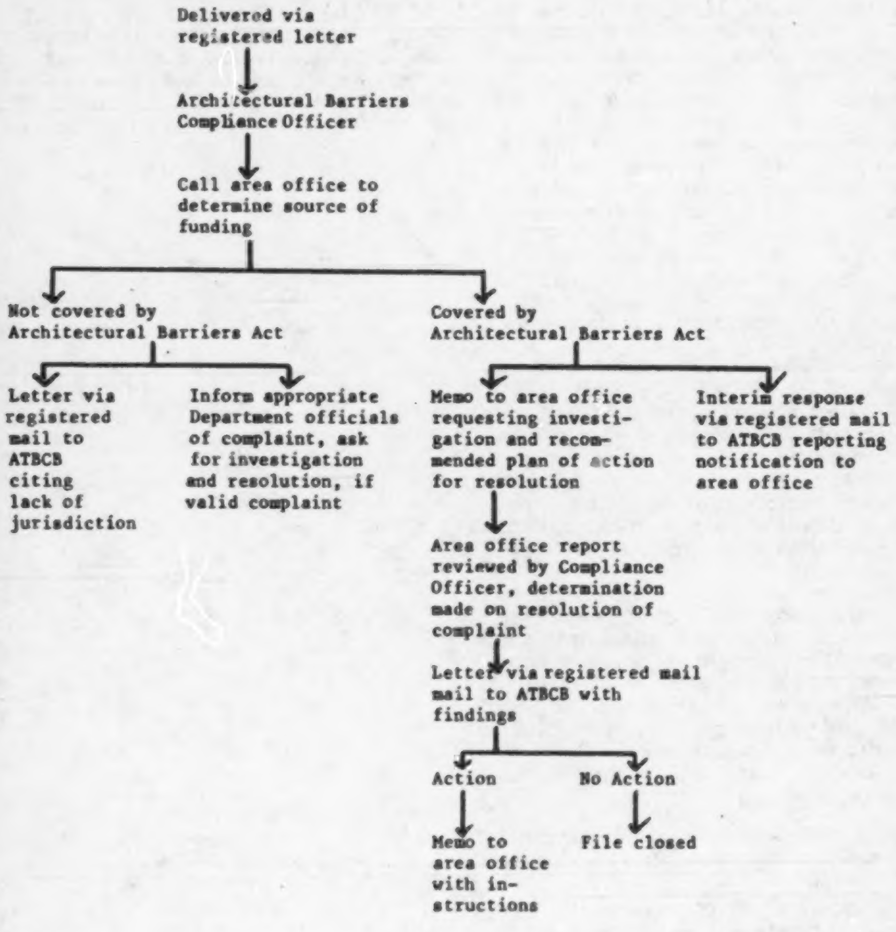
(b) *Citations.* The Office of General Counsel shall, with the assistance of the appropriate Assistant Secretary, respond to any citation issued by the A&TBCB to the Department alleging noncompliance with the standards issued pursuant to the Architectural Barriers Act of 1968, as amended. The applicable procedures regarding such a citation are set forth at 36 CFR Part 1150.

ATTACHMENT B

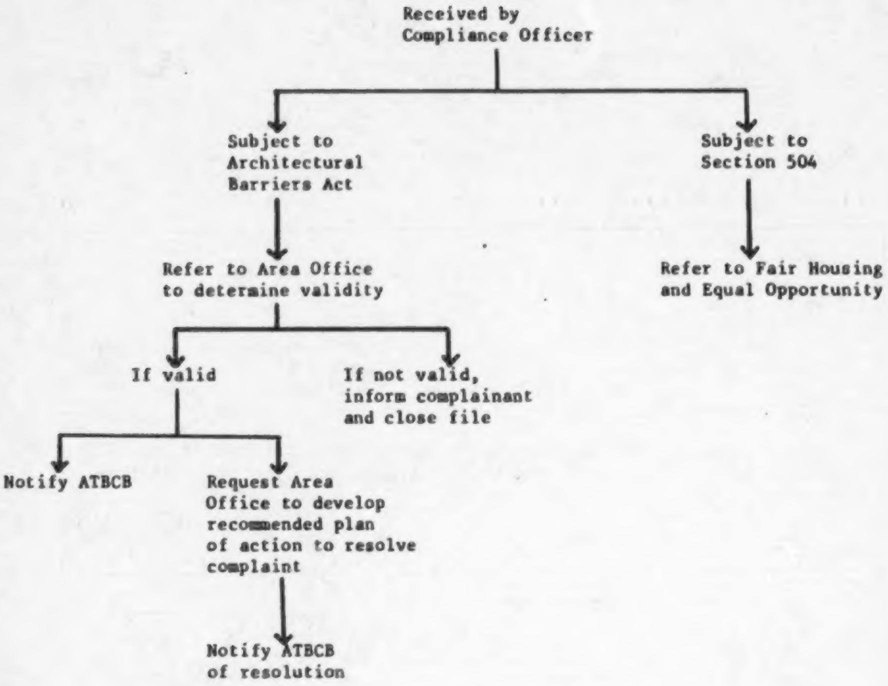
ARCHITECTURAL BARRIERS COMPLAINTS

Sources:
- o ATBCB accepts complaints and forwards them to appropriate agency
- o Department receives some complaints directly from the public

Procedures -- ATBCB Complaints


Delivered via registered letter
Architectural Barriers Compliance Officer
Call area office to determine source of funding
Not covered by Architectural Barriers Act
Covered by Architectural Barriers Act
Letter via registered mail to ATBCB citing lack of jurisdiction
Inform appropriate Department officials of complaint, ask for investigation and resolution, if valid complaint
Memo to area office requesting investigation and recommended plan of action for resolution
Interim response via registered mail to ATBCB reporting notification to area office
Area office report reviewed by Compliance Officer, determination made on resolution of complaint
Letter via registered mail mail to ATBCB with findings
Action
No Action
Memo to area office with instructions
File closed

Procedures -- Direct Complaints


Received by
Compliance Officer
Subject to
Architectural
Barriers Act
Subject to
Section 504
Refer to Area Office
to determine validity
Refer to Fair Housing
and Equal Opportunity
If valid
If not valid,
inform complainant
and close file
Notify ATBCB
Request Area
Office to develop
recommended plan
of action to resolve
complaint
Notify ATBCB
of resolution

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D.C. 20410

OFFICE OF THE ASSISTANT SECRETARY FOR
HOUSING - FEDERAL HOUSING COMMISSIONER

IVED
DEC 20 1983

DEC 1

IN REPLY REFER TO:

Honorable E. Clay Shaw, Jr.
Ranking Minority Member
Public Buildings and Grounds Subcommittee
Committee on Public Works and Transportation
House of Representatives
Washington, D. C. 20515

Dear Mr. Shaw:

Thank you for your letter of November 9, 1983 transmitting questions following the Department's presentation of testimony at the recent Public Buildings and Grounds Subcommittee hearings. Enclosed are responses to each of the questions.

We appreciated the opportunity for the Department to participate in the hearings and would be pleased to provide any further information that may be requested.

Sincerely,

Janet Hale

Janet Hale
Deputy Assistant Secretary
for Policy and Budget

Enclosure

Responses
to
Questions from the Public Buildings and Grounds Subcommittee
Committee on Public Works and Transportation
U.S. House of Representatives

1. What do you understand is the difference between readily accessible and the proposed fully accessible?

Assuming a difference is intended, it appears to be one of expanding both the scope and reach of the concept of accessibility.

Although the Architectural Barriers Act does not define "ready access", after 15 years of implementation, "ready access to, and use of ... buildings" is interpreted as requiring the elimination of architectural barriers so that the physically handicapped can approach, enter and function within a building. Their access to and use of the building is comparable to their non-handicapped counterparts whether as members of the general public, employees or residents. Principal entrances must be accessible and have accessible parking spaces reserved nearby; major circulation routes within the building must be linked and accessible; and of every feature or amenity provided, one or more is accessible.

"Fully accessible" as defined could be interpreted to mean that every element of the building, regardless of whether it would contribute to the ability of a handicapped person to have access to or use of the building, would be required to be barrier free. Thus every entrance to a building, from the main entrance to the loading dock, might have to be accessible, with accessible parking places reserved at each; every public telephone amplified; every toilet stall enlarged and equipped with grab bars. "Fully accessible" might also extend the requirement for accessibility to such restricted areas as sub-basement mechanical rooms and roofs where equipment is located.

A "ready accessible" building thus provides convenient use of a building and all its essential elements without requiring unnecessary duplication or that elements not needed for access also be barrier free. The result of "fully accessible" could mean substantial additional costs with no gain for handicapped people in their use of the building.

2. Do I understand you correctly, Ms. Hale, that your position is changes in the law concerning architectural barriers should be done by addressing the Architectural Barriers Act and not by piecemealing the issue in the Public Buildings Act? Do the other members of the panel agree?

   While I cannot speak for the other members of the panel, from the testimony that they have presented I believe that we are in substantial agreement. It is the Department of Housing and Urban Development's opinion that this approach to amending the Architectural Barriers Act in the Public Buildings Act is not advisable.

   We believe that the Architectural Barriers Act is working well, and with the Uniform Federal Accessibility Standards will work even better. If amendments are to be proposed, however, the better approach would be to develop such proposals on the basis of a review of the Act as a whole, and to propose any amendments independently of other legislation in order to assure that they receive thorough consideration by all interested parties.

3. A. In what type of economic areas are most of the 5,000 housing units you mention on page 7 to be built?

   Allocation of public housing development funds to Public Housing Agencies is based on demonstrated need for housing for low income households in a particular locality. While we cannot predict precisely what type of economic areas will receive these funds, we do know the economic circumstances of the families who will live in the units. Income eligibility for public housing is limited to families with incomes no higher than 80 percent of the area median income, and 95 percent of the units developed with this year's appropriation must, by statute, be occupied by very low-income families, which means families with incomes no greater than 50 percent of area median. In addition, projects with units suitable for occupancy by large families will be given priority for development funds.

B. So, if there is to be a decrease in the number of units to be constructed, Congress will antagonize either the handicapped or economically disadvantaged? Correct?

This is not an "either/or" question. The handicapped here are also economically disadvantaged. It is more a question of balancing the needs of various categories of families eligible for assisted housing. We must be concerned with using available funds as efficiently as possible to serve those in need of housing assistance. We have a particular concern for hard-to-house families, such as those with handicapped members who require accessibility features and those large families that cannot find housing of suitable size at an affordable price. That is why we believe that it is not appropriate to impose "fully accessible" requirements that add to the cost of housing without providing corresponding gains in the usability of the units by handicapped residents. It could reduce the total number of units that can be made available for all economically disadvantaged people, whether they are physically handicapped or able-bodied.

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

December 2, 1983

Honorable E. Clay Shaw, Jr.
Ranking Minority Member
Public Buildings and Grounds Subcommittee
U. S. House of Representatives
Washington, D. C. 20515-0001

Dear Congressman Shaw:

This is in response to your recent request for supplemental handicapped accessibility information as a follow-up to our participation in recent hearings on the Public Buildings Act (HR 630) conducted by your subcommittee.

You asked for our understanding of the difference between "ready access" for the handicapped as required by current law and the term "fully accessible" as proposed in the Bill S. 452, recently passed by the Senate. Having read the committee report and floor debate in the Senate, we do not believe that any substantial difference is intended in fact. In the administration of current law, the provision of "ready access" for the handicapped has been interpreted on a practical level to call for technical design standards drawing on those most widely used by architects throughout the country, which have been prepared by the American National Standards Institute. These widely accepted technical standards have provided the starting point both for our present regulations and for the proposed new uniform federal standards. For particular features, such as doors, telephones, toilets, parking spaces, and the like, the standards typically have required a percentage of each feature to be specially adapted for handicapped use. For example, our current regulations for public parking for the handicapped require a minimum of four percent of the public parking area (never less than one space) to meet special design standards.

The term "fully accessible" as proposed in the Senate bill apparently should be taken to mean simply that agencies are to comply fully with the technical design standards which draw on standard architectural practice for assuring handicapped access. Nevertheless, we believe it is very bad and dangerous legislative strategy to change key terminology of an existing statute without intending to make substantial changes in fact, unless the existing language is confusing or otherwise defective, which clearly the "ready access" language is not. We have little doubt that the new terminology would invite litigation contending, for a start, that "fully accessible" should mean that 100% of each type of feature--all parking spaces, for example--must be built for accessibility, instead of some reasonable percentage as specified by present standards. Such a contention, if adopted by the courts despite the absence of legislative history showing the intent to make changes in practice, would increase accessibility costs dramatically with little, if any, practical benefit. It is this danger of misinterpretation of the Congressional intent, if the law is revised apparently without having specific changes of administration in mind, that leads us to oppose the new terminology proposed in the Senate.

We appreciate the opportunity to present our views on this topic. If any further questions arise, please feel free to contact us.

Sincerely,

Roger P. Craig

Roger P. Craig
Assistant Postmaster General
Real Estate and Buildings Department

THE POSTMASTER GENERAL
Washington, DC 20260-0010

MAR 23 1984

Honorable Robert A. Young
House of Representatives
Washington, D.C. 20515

Dear Congressman Young:

This is in response to your recent letter transmitting for my response several questions on matters relating to the Architectural Barriers Act of 1968, as amended.

Enclosed is the information requested. I understand that the enclosed material will be incorporated into the official record of your Subcommittee's November 3, 1983 hearing on this subject.

If you need any further information, please contact my office or William T. Johnstone, Assistant Postmaster General, Government Relations Department, on 245-4181.

Sincerely,

William F. Bolger

Enclosure

1. Q. How many of the post offices are leased, as opposed to owned, by USPS? How many of the leased post offices do not meet the USPS accessibility standards? What is the basis for your response? If you don't have this information, are you able to provide an estimate of the cost of making all leased buildings accessible?

   A. The Postal Service owns 5,004 buildings and leases 29,512 buildings. Virtually all leased buildings, except those relatively few that have actually been designed and constructed under current USPS accessibility standards would not meet the latest postal standards in some aspect or other. However, many of these leased buildings are "accessible," partially or fully, either because of compliance in whole or in part with prior Postal Service standards or with State or local buildings codes, or simply because the buildings contain no barriers to use by handicapped persons.

   We have no precise estimates of the costs of making our leased buildings "accessible." As suggested above, it has been our experience that, in general, the inventory of privately-owned facilities available for leasing in the United States does not comply with current postal access standards. We estimated about three years ago that the average cost to retrofit a leased facility (both workroom and customer service areas) in accordance with current postal access standards would be about $20,000. Based on our estimates of the number of facilities leased annually and the average cost to retrofit them, we projected about three years ago that the annual retrofitting cost would be $71 million. This cost would presumably be higher today due to inflation. Should a more practicable approach be taken to the determination of accessibility requirements-- such as not requiring changes in buildings conforming to prior postal, State or local standards, or otherwise accessible to the public, or in small workroom areas of offices not employing any handicapped employees-- the cost of retrofitting these buildings could be substantially lower.

2. Q. How does USPS ensure that alterations comply with the accessibility standard? For instance, who reviews the construction specifications to ensure that they meet the USPS accessibility standard? Are these personnel trained in the use and application of the standard?

   A. Real Estate and Buildings Department personnel, trained and experienced in the application of access design standards, maintain direct responsibility for assuring that new construction projects and alteration projects incorporate the proper accessibility features.

3. Q. Questions concerning the draft uniform standards were directed primarily to GSA. Would you, however, look over the questions and provide us with your agency's views, particularly with regard to the standards' compliance with the Board's minimum guidelines and to the apparent emphasis on the current ANSI standards? Please also address the question of whether every agency will be using the same exact standards. Specifically, the questions mentioned above are: a) In your opinion do the draft uniform standards comply with the minimum guidelines? Have there been any problems with this? b) From testimony during the hearings, it appears that heavy emphasis in the uniform standards has been placed on the direct current ANSI standard--the format and graphics. Why has this approach been taken in view of the fact that Congress, in the Rehabilitation Act amendments, provided for the minimum guidelines to be the basis for your standards? c) When these uniform standards are final, will every agency be using the same exact standards? Or will there necessarily be some differences due to the unique situations each agency might have? Can you give some examples?

A. The Uniform Standards in our opinion comply fully with all requirements of the Architectural and Transportation Barriers Compliance Board's (A&TBCB) minimum guidelines and requirements. The Uniform Standards also use the familiar graphics and technical provisions of the American National Standards Institute (ANSI) accessibility standards. There is no substantive difference between ANSI graphics and technical provisions and A&TBCB graphics and technical provisions. The ANSI materials have the advantage of being more familiar to architects because they use them for nonfederal projects. Adopting the ANSI graphics would promote accessibility throughout the country, through using the most pervasive access standards currently available. We have received many endorsements and letters from prominent organizations such as the American Institute of Architects in support of our effort in this respect. The minimum guidelines specifically left open the possibility that different graphics and technical provisions, not inconsistent with the minimum guidelines, would be adopted as agency standards.

Currently, all agencies plan to use the same basic provisions in their standards. There will be additional provisions that agencies will add to cover special agency needs in such areas as special facility types and special types of design, construction, or alteration activities.

4. Q. Section 6(2) of the Barriers Act requires that each of the standard-setting agencies establish a system of continuing surveys and investigations to ensure compliance with the standards.

Do you have such a system in place?

A. Yes.

B. What does your system consist of?

A. When construction drawings are completed for new construction projects, or alteration projects that involve features for which we have applicable accessibility standards either the postal design and construction manager or the contract design architect/engineer must certify in writing that the design incorporates the requirements of Postal Service accessibility standards. Later, at the time of final acceptance of work after completion of construction, either the postal design and construction manager or the contract design architect/engineer must certify in writing that the work has been performed in compliance with Postal Service accessibility standards.

Post-construction surveys and investigations are also conducted when complaints are received about particular facilities. In any cases where the complaint is found to be justified, corrective action is taken.

Q. If you do not have such a system, why not?

A. Not applicable.

Q. Do you maintain inventories of your buildings such that you know which buildings come under the Barriers Act and at what level of accessibility those buildings might be?

A. The Postal Service maintains a central computerized Facility Management System (FMS) which provides basic information such as date of facility occupation, whether the facility is owned or leased, its size, and like information. The FMS does not contain information on the level of accessibility at particular facilities.

Q. Do you know how many of your buildings do not come under the Barriers Act provisions? Under what circumstances are such buildings not covered by the Architectural Barriers Act?

A. In general, we consider postal buildings to be covered by the Act if they are or were to be constructed or altered on our behalf either on or after October 18, 1976, or between August 12, 1968, and July 1, 1971, or leased on or after January 1, 1977. Other postal buildings are considered not to be covered until further action is taken triggering the Act's coverage, such as the execution of a new lease or a decision to alter. The nature and extent of the coverage varies according to the standards in effect at the time of the construction or alteration. No count is maintained of buildings or parts of buildings covered by the act.

5. Q. Do your agencies receive complaints directly from the general public concerning inaccessibility to certain buildings? Please describe what procedures have been established in your agency for dealing with such complaints?

A. Yes. Such complaints are resolved by the Real Estate and Buildings Department in Washington, D.C., principally on the basis of reports furnished by our field offices. The field offices investigate whether the building is subject to the Barriers Act, the nature of the asserted barrier, or barriers, the cost of any renovation if it is not legally required, the location of nearby post offices through which the customer may be served, and the availability of alternative services provided by the postmaster.

6. Q. About how many such complaints are received by your agency each year? Have the number of complaints dropped in recent years? Or increased?

A. The average annual number of such complaints over the past several years has been 200. The number of complaints has remained about the same for several years.

7. Q. Are such complaints forwarded to the Compliance Board for any determination on whether there is a violation of the Barriers Act standard or for advisory purposes? If not, why not?

A. No. Since we have sufficient information and authority to resolve the complaints, referral to the Compliance Board is not necessary.

8. Q. The A&TBCB has issued rules setting forth procedures to resolve with the agencies those complaints received by the Board. Are such matters resolved amicably in most instances? Have there been any unusual problems?

A. All complaints have been processed under the "amicable resolution" part of the Board's rules, and the formal complaint procedure has never been invoked against the Postal Service in the ten or so years that the Board has been in existence. There have been some problems in the past in the complaints process, but we would not call them "unusual," especially considering that the process has been operating for some time.

9. Q. In 1980, the GAO did a follow-up review of an earlier review and report of 1975. In general, GAO apparently found progress had been made with building accessibility since their 1975 review, but more in good faith effort than from systematic and coordinated effort under the law. Although further progress has undoubtedly been made since then, there is one particular GAO recommendation on which I would like you to comment. GAO said that some confusion existed between the Compliance Board and some agencies because the Barriers and Rehabilitation Acts overlap functions without clarifying respective leadership and authority roles. The recommendation was that the Barriers Act be amended to establish the Board as the principal authority to provide leadership and ensure compliance. Further, GAO recommended that HUD, DOD, GSA, and the Postal Service consult with the Board and obtain its concurrence to be sure standards conform to the guidelines and requirements.

A. We believe the concerns GAO expressed would not be valid today. The standard-setting authority of the agencies is appropriate and does not, in our view, need to be restricted. Buildings are being designed, constructed, or altered every day to meet handicapped access requirements. It takes time to alter the built environment, but it is clear, we believe, that the system created by the Architectural Barriers Act is working reasonably well. The changes proposed are not necessary and could be harmful, in that they could contribute to imposing costly requirements of little if any value to handicapped people.

10. Q. In S. 452, Section 112(2), the term "physically handicapped person" would mean any individual with a physical impairment that precludes such person's use of a building to the same extent that an individual with unimpaired mobility can use such building.

The definition seems to describe a physically handicapped person in terms of a building and is geared toward mobility of handicapped individuals.

Do you have any particular problems with that definition?

A. The problems we see with this proposed definition are:

(a) Enacting the definition may have unintended, or now unexpressed, consequences;

(b) No need for the definition has been shown:

(c) The definition would appear to convert every mobility limitation into a handicap.

Q. Do you think it adequately covers barriers encountered by persons who might have hearing and visual problems, or persons with various nervous disorders or other physical handicaps?

A. It is not possible definitively to evaluate the adequacy of the proposed definition without referring to the purposes it is supposed to accomplish.

11. A. If it were decided to include in the Architectural Barriers Act a definition of "physically handicapped person," do you think it would be reasonable to use language similar to that used in other legislation such as: "Physically handicapped person" means any individual with a physical disability which limits one or more major life activity? Do you have any other suggested language?

A. We recommend that no definition be enacted. Since no practical problems, disputes, or litigation have arisen concerning the present term in the fifteen years since its enactment, no amendment of existing law for the purpose of enacting a definition of the term appears either necessary or desirable.

12. Q. The definition for the term "fully accessible" as contained in S. 452 would, according to your testimony, be susceptible to broad interpretation and greatly increase the cost of accessibility to the Federal Government. What would your reaction be to language defining the term to mean: The incorporation of such features and equipment which make a building or facility usable by physically handicapped persons to the same extent as nonphysically handicapped persons

and, in a building of historic, architectural, or cultural significance, the incorporation of such features and equipment in such manner as to be compatible with the significant architectural features of the building to the maximum extent possible.

Do you think that would be a workable definition?

A. No. Depending on its interpretation, this definition could lead to disputes, litigation, and wasteful expenditures. Also, it could set an accessibility target that would be impossible to meet.

13. Q. If we were to decide that some definition for either the term "fully accessible" or "readily accessible" should be included in the Architectural Barriers Act, do you have any suggestions for language to define these terms?

A. Not at this time. The term "ready access to" as it currently exists in the Architectural Barriers Act appears to be acceptable and working adequately. There does not appear to be any need to change the language. The word "ready" seems to imply some quality of reasonableness that may be lacking in a definition based on "full" access.

14. Q. S. 452 would tighten agency use of the waiver and modification provisions of the Barriers Act. From your prepared statement, apparently you do not believe this power has been abused in the past and, in fact, is used only on a very few occasions. Could you provide us with figures reflecting the number of times you agencies have waived standards or modified them? How are waiver and modifications currently handled by your agencies and for what kinds of situations?

A. The Postal Service has exercised its waiver power in only one instance and its modification authority only once. Modification and waiver requests are reviewed on a case-by-case basis and approved by the Assistant Postmaster General for the Real Estate and Buildings Department. The only two situations where we have exercised this authority were as follows:

-Pre-renovation elimination of handicapped access to a workroom at an Operational Test Facility due to the fact that the operations to be conducted in the room would make the room an unsafe one for handicapped persons to enter.

-Post-design modification of the stair riser height at a training facility from the prescribed 7-inch height to 7.25 inches.

15. Q. S. 452 would limit action to waive a standard to a building to be leased (other than a building to be constructed for lease), and where the waiver is necessary to meet an emergency situation. Has the waiver provision been used in the past by your agencies in connection with leased buildings?

A. No.

16. Q. Your prepared statements reflect that limiting the power to waive or modify standards would create problems with your construction and alteration projects and would be more costly. Would you elaborate a bit on this and provide some examples of the kinds of problems that might be created and estimates of increased costs?

A. Our prepared statement indicated that we are not aware of any abuses of the modification and waiver authority. Further, we stated that we believe we have used this authority in a prudent manner. Our point is that if this power were to be revoked, it could involve the expenditures in situations where, for example, accessibility cannot be provided due to architectural or structural problems, or due to other unusual circumstances.

Should the Architectural Barriers Act be definitively interpreted by the Courts to require retrofits of buildings designed and constructed without a requirement to comply with federal accessibility standards, the waiver and modification provision could become very important. The Court of Appeals' decision recently reversing the lower Court's decision on requirements for accessibility in leasing existing buildings specifically cited the waiver and modification provision as providing ". . . a mechanism by which unreasonable and excessive costs can be avoided by the standard-setting agencies that carry out the mandate to make existing leased facilities accessible." For example, the waiver and modification provision might be used to help avoid wholesale architectural changes in small postal work spaces that employ no handicapped employees at all. The cost savings here could range as high as the tens or even hundreds of millions of dollars. It could be a terrible waste if these provisions of the law were revoked even before they have been tested in areas where it could save great sums of money at no real cost to any handicapped person actually using the facilities involved.

17. Q. Are the waivers and modifications of your agency standards forwarded to the Compliance Board for a review of findings of fact which was a function assigned the Board under the Rehabilitation Act, as amended in 1978?

A. The law does not require that we forward waivers and modifications to the Compliance Board, and we have not forwarded them.

18. Q. For some time, this subcommittee has tried to get hard information about the costs for accessibility, particularly in light of the minimum guidelines. Informal estimates have ranged from a high of $800 million to as low as approximately $3 million. Can you explain why this difference?

A. The great disparity in accessibility cost estimates is, in part, a result of the different standards, codes, guidelines, and proposals defining the concept "accessible." It also arises from the fact that different people are making the estimates based on different assumptions.

Q. What do you now estimate for a cost figure based on the minimum guidelines and/or the uniform standards as you have presently drafted them?

A. We anticipate no significant additional costs for conforming to the A&TBCB's minimum guidelines and requirements as they were finally adopted.

Q. Since the minimum guidelines--and presumably the uniform standards--contain sections yet to be completed pending further research, are the cost figures presently estimated likely to be considerably greater? Would you elaborate on those sections expected to be included in the minimum guidelines? Will the uniform standards be amended to reflect them? Are there particular problems with these sections?

A. The cost of implementing the standards for the items currently requiring further research cannot be estimated accurately in advance of knowing what the requirements will be or how they will have to be applied.

19. Q. Your statements reflect that the provisions of S. 452 would be very costly. Do you have estimates as to how much more costly?

A. In estimating the potential cost of S. 452, we have had to consider some alternative assumptions concerning its possible scope.

If the bill were taken to require "full" accessibility in the sense of enabling everyone to use Federal buildings "to the same extent" regardless of any handicap (see proposed Section 8 (1)), full compliance would be technically impossible. The cost of trying to comply to the fullest technically possible extent is unlimited and therefore cannot be reasonably estimated.

Alternatively, if "full" accessibility were viewed instead to require that standards concerning the accessibility of specific features such as doors, telephones, toilets, parking spaces, and the like be revised so that 100% of each type of feature is built for accessibility, instead of some lesser percentage as now specified, then the cost would still be great but the following estimates are possible.

Such a revision of current standards, without change in requirements concerning to which buildings they apply, is estimated to cost the Postal Service over $100 million per year and then only if specialized access areas such as those used only by maintenance personnel or postal inspectors are excluded. The estimate rises to approximately $600 million per year if those specialized areas must also be made so fully accessible.

If, in addition, the "full" accessibility requirements are extended to leasing actions without regard to plans for construction or alteration, then the previous estimates would be increased to over $200 million and $1.5 billion per year, respectively.

20. Q. On what basis are your cost estimates made? What are the problems in determining costs?

A. Our cost estimates were based on the review of typical plans for several ranges of building sizes to determine square foot unit costs for each size. Unit costs were then applied to the estimated number of facilities falling into each size range and totaled for all ranges. Problems in determining costs include:

Variation in degree of difficulty and extent of modification required for retrofit.

Differences in site conditions and plan variations on new facilities.

Geographical location differences affecting costs.

21. Q. In the final version of the minimum guidelines, the Compliance Board expressed no position on when a leased building is required to be accessible. We are, of course, well aware that the lease issue is currently in the courts.

Why is it not in the guidelines?

A. The issue of the applicability of the Barriers Act to leased buildings raised a disputed issue of legal interpretation which the courts in our system have the final authority to resolve. The Board chose to take no position on this disputed matter which only the courts could finally resolve.

Q. How does the A&TBCB justify placing the burden of interpretation of the Barriers Act on private litigants?

A. The Board did not place the burden of interpretation of the Barriers Act on private litigants. As stated in the preceding answer, under our system of law the courts are the final arbitrators of legal disputes. No Board determination could have changed this situation which in this case carried with it the possibility of litigation involving private parties, regardless of the position taken or not taken by the Board.

Q. Do the draft uniform standards deal with this issue?

A. No.

Q. How are you currently handling accessibility in leased buildings?

A. Current Postal Service policy requires that if features of leased buildings are altered for which we have accessibility standards, then those alterations must be carried out in accordance with the applicable standards. We also have altered facilities not otherwise required to be altered to provide access on a case-by-case basis to provide access based on customer need, cost, and feasibility. Further, we give preference to leasing buildings that are accessible.

The problem typically lies in cases where no accessible space is available--especially in the many small towns where we operate and where the costs would be extremely high to make older buildings accessible.

22. Q. Should the appeal now in the courts favor the Mason Rose position on the lease issue? Will your agency's policy concerning the lease of accessible space be changed? With what effect?

A. We believe that the litigation on the lease issue now in the courts ought to be resolved in the Postal Service's favor and not in favor of Mr. Rose's position. We believe this resolution would be consistent with congressional intent in not requiring costly retrofitting of existing buildings. However, the Postal Service will make whatever changes in its policies and practices that may be required to conform to the final outcome of this litigation.

ADDITIONS TO THE RECORD

Statement of
The Associated General Contractors of America
Presented to the
Subcommittee on Public Buildings and Grounds
# of the
Committee on Public Works and Transporation

On the Topic of
H.R. 630, The Public Buildings Act Amendments of 1983

AGC is:

* More than 32,000 firms including 8,500 of America's leading general contracting firms responsible for the employment of 3,400,000-plus employees;
* 112 chapters nationwide;
* More than 80% of America's contract construction of commercial buildings, highways, industrial and municipal-utilities facilities;
* Over $100 billion of construction volume annually.

The Associated General Contractors of America supports H.R. 630, the "Public Buildings Act Amendments of 1983."

The preponderance of building construction, whether built for the federal government as owner or lessee, is constructed by AGC members.

AGC supports H.R. 630 because of the order and systematic planning it will afford the federal government as it begins to assess the critical status of the federal building infrastructure, and begins to set priorities to maintain our large public investment in buildings.

Recently, the General Services Administration advised AGC that about $315 million will be available during FY '84 to spend on GSA repair and alteration projects. The figure includes funds for $200 million for FY 1984 and funds not spent during previous fiscal years amounting to $115 million. The budget figure for new construction is uncertain, and more definitive figures are to be developed by the Congress. Such figures mark a more positive program than the experience of the past two years. However, AGC is also aware that the General Services Administration controls $9 billion worth of buildings yet spends only 2% of its annual budget on maintenance for a building stock that averages 47 years of age.

It is AGC's view that our large public investment in buildings deserves the same attention given to other areas of the nation's infrastructure such as our crumbling roads and bridges. Without a rededication of public resources to meet public building construction and maintenance needs, our nation's productivity and quality of life will suffer.

Specifically, AGC favors the proposed amendment to Section 11 of the Public Buildings Act of 1959 which requires the General Services Administration to prepare and submit to the Congress each year a program for the coming year along with a 5-year construction plan. This requirement would replace the method currently used by Congress of authorizing projects on a piece meal basis with no indication of the relationship of the projects to each other or any establishment of priority of projects. More importantly, the inventory will permit the Congress to assess the federal building infrastructure, and to undertake well-informed steps to address its infrastructure needs.

AGC also supports the method of financing public buildings construction as covered in the proposed amendment to Section 7 of the Public Buildings Act of 1959. The amendment would authorize the GSA to borrow funds from the Treasury to finance the construction of public buildings with repayments to be made annually over the life of the building, but not exceeding thirty years. Thus, the federal government would be acquiring and paying for space it needs in much the same manner as home owners and businesses.

Congress will still control the pursestrings, however as the proposed amendment to Section 7 would also prohibit the construction or acquisition of any building until that particular building project had been authorized by the Congress and an appropriation for the cost of construction or acquisition had first been made by Congress.

AGC is also pleased that H.R. 630 would bring tighter Congressional control over the federal government's leasing obligations by amending Subsection (a) of Section 11 of the Public Buildings Act of 1959 to require submission of yearly reports giving the annual leasing cost for each leased location, the total expected leasing costs over the remaining term of each lease, and the amount of space and number of employees assigned to each federal agency.

AGC is disappointed, however, that H.R. 630 does not contain language similar to that contained in Senate Bill S. 452 which requires assurance that "within ten years of the date of the enactment of the Act, no fewer than 80 per centum of the officers and employees of the Government whose offices are provided under this Act shall have their principal offices in public buildings." We would urge that this committee consider a similar requirement in H.R. 630. Insertion of this requirement could save the federal government lease payments of billions over the next ten years while the entire cost of any construction programs mandated by the requirement could be recouped in less than 15 years.

H.R. 630, amended to require an increase in the percentage of federal employees working in government owned buildings, as compared to working in leased space, would be an excellent step toward economical, quality construction of government office space and control over leasing costs. AGC urges the committee to take favorable action on this bill so that it may be submitted quickly to the full House for discussion and passage.

AGC also urges the committee to require reliance on competitive private enterprise in meeting the construction needs of H.R. 630. Construction by government forces, utilizing government employees and government-owned equipment, is not only in conflict with the free enterprise system, but affords none of the economies or efficiencies of construction by contract.

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